

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

24 HOUR FITNESS USA, INC., a California corporation,

Plaintiff,

V.

BALLY TOTAL FITNESS HOLDING
CORP., a Delaware corporation, and
MICHAEL SHEEHAN, an individual,

Defendants.

Civil Action No. 08 cv 3853

Judge Joan Humphrey Lefkow

Magistrate Judge Morton Denlow

**PLAINTIFF'S RESPONSE TO MOTION OF DEFENDANTS, MICHAEL SHEEHAN
AND BALLY TOTAL FITNESS HOLDING CORPORATION, TO DISMISS THE
FIRSTAMENDED COMPLAINT FOR LACK OF SUBJECT MATTER
JURISDICTIONAND/OR FOR FAILURE TO JOIN A NECESSARY PARTY**

Plaintiff 24 Hour Fitness USA, Inc. (“24 Hour Fitness” or “Plaintiff”), by and through its attorneys, hereby submits its Response to the Motion of Defendants, Michael Sheehan (“Sheehan”) and Bally Total Fitness Holding Corporation (“Bally”), to Dismiss the First Amended Complaint For Lack of Subject Matter Jurisdiction and/or For Failure to Join a Necessary Party (the “Motion”):

I. FACTUAL BACKGROUND

On June 23, 2008, Sheehan, without notice, resigned from his position as Chief Operating Officer (COO) of 24 Hour Fitness and suddenly announced that he had accepted the position of Chief Executive Officer (CEO) of Defendant Bally, a direct head-to-head competitor, with a starting date of July 1, 2008 in Chicago, Illinois. The next day, June 24, 2008, Bally issued a national press release announcing to the public and to the trade that Sheehan would become the CEO and a member of the Board of Directors of Bally in Chicago on July 1, 2008:

CHICAGO, June 24 / PRNewswire/—Bally Total Fitness Holding Corporation today announced that it has appointed Michael Sheehan to

serve as its Chief Executive Officer, effective July 1. Mr. Sheehan will also serve as a member of Bally's Board of Directors.

* * * *

Mr. Sheehan said "I am looking forward to joining the Bally team and I am eager to add value to this established brand. For many years, Bally has been a leader in the fitness industry—Bally's facilities, fitness programming and personnel are among the best in the business. Under my leadership, Bally will continue to focus on providing high-quality comprehensive fitness experiences to our members."

(Am. Compl. Ex. C.)

A. The California Lawsuit

24 Hour Fitness filed an emergency application for a temporary restraining order (TRO) against Sheehan in California on June 26, 2008. No lawsuit was filed against Bally in California. The claims were filed under California law for breach of contract and other California causes of action. The California court held a hearing and denied the TRO application on June 30, 2008. That evening, Sheehan flew to Chicago and, the next morning, July 1, 2008, reported for work at Bally's headquarters in Chicago as the new CEO of Bally. (**EX. A**, Sheehan Dep. 30:22-31:23, July 22, 2008.)

B. The Chicago Lawsuit

Sheehan was domiciled in Illinois on July 1, 2008, and he reported to work at the corporate headquarters of Bally in Chicago on July 1, 2008. Sheehan's assumption of duties at Bally created the threatened or actual misappropriation of trade secrets involving both his new employer, Defendant Bally, as well as Sheehan. The California lawsuit was dismissed without prejudice, and this new lawsuit then was filed against new party, Defendant Bally, and against Sheehan, on July 7, 2008.¹

¹ The Amended Complaint, filed July 8, 2008, is the only operable complaint in this action, and neither the original Complaint, nor the complaint filed in the California action, control this action in any manner. See *Manning v. Ashland Oil Co.*, 721 F.2d 192, 197 (7th Cir. 1983) (quoting *Int'l Controls Corp. v. Vesco*, 556 F.2d 665, 668 (2d Cir. 1977) ("It is well-established that an amended complaint ordinarily supersedes the original and renders it of no legal effect.")). Contrary to Defendants' posturing, there has been no "fraudulent averment" nor any "admissions" made in the original Complaint (Mot. pp. 4-5), and Plaintiff acted in good faith in promptly and independently curing the inadvertent inclusion of 24 Hour Fitness Worldwide, Inc., Plaintiff's parent, not "affiliate." (Mot. p. 2.) While 24 Hour Fitness Worldwide was a proper party in the California action's claim for breach of a Shareholder's Agreement between it and Sheehan, no such claim ever was pleaded in this action. Clerical and/or typographical errors can occur, especially when time is of the essence, as Defendants must recognize: counsel for Defendants failed to sign the underlying Motion pursuant to Fed. R. Civ. P. 11 (2008).

Service was effectuated on both Defendants, and Plaintiff filed motions for expedited discovery and to set a preliminary injunction hearing date, noticing the motions before this court for July 15, 2008. On the morning of July 15, 2008, before the hearing, Defendants' counsel, *sua sponte*, asserted that Sheehan intended to remain in California even though he had reported to work as Bally's new CEO on July 1, 2008. Faced with this incongruous position, Plaintiff's counsel requested the immediate deposition of Sheehan to confirm under oath that Sheehan was in fact a domiciliary of Illinois on July 7, 2008 when the complaint in this action was filed.

Sheehan's was deposed on July 22, 2008, and his sworn testimony confirmed that Sheehan reported to work on July 1, 2008 and was, as of that date, present in Illinois as the CEO of Bally. The Notice of Deposition requested production of any employment agreements with Defendant Bally and documents regarding assistance in relocation to Chicago. Defendants produced three documents, including the Employment Agreement that Sheehan executed on June 20, 2008. This agreement unequivocally demonstrates that Sheehan's intent to be a domiciliary of Illinois was fixed on June 20, 2008 when Sheehan executed the contract accepting and manifesting his intent to become the CEO of Bally and to make Chicago his home.

As of the date this lawsuit was filed, July 7, 2008, Sheehan was physically present in Illinois—with the intent to remain in Illinois—and this intent was fixed on June 20, 2008 when Sheehan executed this contract to become Bally's CEO, as Sheehan admitted during his deposition on July 22, 2008:

[Counsel]: The contract states, you agree, you being Mr. Sheehan, Michael Sheehan, you agree to move your permanent residence to the Chicago area. That was your agreement and intent at the time you agreed and accepted the position as CEO in what you now are saying was late June, 22 correct?

[Sheehan]: Can you clarify the question a little bit for me.

[Counsel]: Let's just take the words. You agreed to move your permanent residence to the Chicago area. You understand what that means?

[Sheehan]: Yes.

[Counsel]: You agreed to move your permanent residence to the Chicago area when you accepted the position as CEO of Bally that was predicated upon your acceptance and intent to move your permanent residence to Chicago?

[Sheehan]: By July 31st, yes.

[Counsel]: Oh. So you're saying by July 31st. You're putting that qualifier on it. But your intent at the time you accepted the CEO position was to move your permanent residence to Chicago, correct?

[Sheehan]: On the date I accepted, yes.

* * * *

[Counsel]: Okay. So let's make this Exhibit 4-A. It is now the signed page 6.
(Exhibit 4-A marked as requested.)

[Counsel]: I'm handing you, Mr. Sheehan, what I have marked as Exhibit 4-A. Is that a true and correct copy of your signature on Exhibit 4-A?

[Sheehan]: Yes.

[Counsel]: And June 20, 2008, is the date upon which you accepted the conditions of employment to become the CEO Bally?

[Sheehan]: No.

[Counsel]: Well, it's dated June 20.

[Sheehan]: Yes.

[Counsel]: So when you signed it dated June 20, were you accepting employment as the CEO of Bally on that date?

[Sheehan]: No.

[Counsel]: Well, it says, "Accepted this 20th day of June 2008." Can you state for the record what was accepted on that date.

[Counsel for Defendants]: Object to the form of the question.

[Sheehan]: That's the date I wrote in, the 20th.

[Counsel]: No. You say it says, "Accepted this blank day of June 2008?" Do you see that?

[Sheehan]: Yes.

[Counsel]: And you signed "Michael Sheehan," correct?

[Sheehan]: Yes.

[Counsel]: What did you accept on June 20, 2008?

[Sheehan]: The agreement.

(**EX. A**, Sheehan Dep. 21:20-22:18, 46:5-47:14; **EX. B**, Employment Agreement, 3, 6.)

Despite this unequivocal admission by Sheehan, Defendants filed the underlying motion the next day, attaching, in an unsuccessful attempt to recant, retract, amend, and/or explain away his admissions of fact made during his deposition, a surprise declaration executed by Sheehan averring that an unnamed Director of Defendant Bally had "orally" modified the Employment Agreement, allegedly allowing Sheehan to delay the purchase of a local residence until thirty

(30) days after the end of the litigation.² (Sheehan Decl. ¶ 9, July 23, 2008.) The exact move-in date to an Illinois residence does not alter the fact that Defendant Sheehan was present in Illinois on July 7, 2008 on the date the Complaint was filed with the intent (fixed on June 20, 2008 when he signed the Employment Agreement) to make Illinois his home and to stay in Illinois indefinitely. (**EX. B.**) Also, though not mentioned in his declaration, Sheehan listed his California residence for sale with a real estate agent the same day his declaration was executed. (**EX. C**, MLS Fact Sheet for 4542 Lilac Ridge Road, Contra Costa, Cal., July 23, 2008.)

II. ARGUMENT

The Amended Complaint properly pleads diversity jurisdiction pursuant to 28 U.S.C. § 1332, as complete diversity exists between Plaintiff 24 Hour Fitness, a citizen of California, and Bally and Sheehan, citizens of Illinois and Delaware. Sheehan became a citizen of Illinois on the evening of June 30, 2008, when he arrived in Chicago, Illinois to assume the position of CEO of Chicago-based Bally, with the intent to remain in Illinois indefinitely, i.e. to establish his domicile in Illinois. Furthermore, Plaintiff 24 Hour Fitness USA's parent corporation, 24 Hour Fitness Worldwide, Inc., a citizen of California and Delaware, is neither a necessary nor indispensable party pursuant to Rule 19 of the Federal Rules of Civil Procedure. Therefore, this Court has subject matter jurisdiction through complete diversity pursuant to 28 U.S.C. § 1332, and the Court should deny Defendants' motion.³

A. Sheehan Is A Citizen Of Illinois.

Defendants' attempts to blur the standard for determining domicile cannot contradict the facts—that at the time the instant action was filed, Sheehan was present in Illinois and intended to remain in Illinois indefinitely, thereby establishing his domicile, and citizenship, in Illinois and establishing this Court's diversity jurisdiction. *See generally, Midwest Transit, Inc. v. Hicks*, 79 Fed. Appx. 205 (7th Cir. 2003). A person's domicile is separate and distinct from his residence; while an individual may have multiple residences, he or she only has one particular domicile at

² This unsubstantiated statement is inadmissible hearsay pursuant to Fed. R. Evid. 802 (2008).

³ This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. On July 22, 2008, Plaintiff filed a Motion for Leave to File Second Amended Complaint *Instantly*, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure to add a third cause of action against Defendant Sheehan for his violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.* Justice requires that Plaintiff be granted leave to file the Second Amended Complaint *Instantly* pursuant to Fed.R.Civ.P. 15(a)(2).

any point in time. Domicile is determined by establishing two elements: (1) an individual's physical presence or residence in a state and (2) the individual's intent to remain indefinitely, or in other words, to "make that place home 'for the time at least.'" *Sadat v. Mertes*, 615 F.2d 1176, 1180 (7th Cir. 1980); accord, *Mader v. Motorola, Inc.*, No. 92 c 8089, 1999 U.S. Dist. LEXIS 11224, *8-9 (N.D. Ill. July 14, 1999); *Samudio v. O'Loughlin*, No. 96 c 2958, 1997 U.S. Dist. LEXIS 3370, *6-7 (N.D. Ill. Mar. 12, 1997). Moreover, courts have recognized that in today's modern and mobile society, the test can turn into "a complex, even arbitrary, inquiry into an individual's intent." *Midwest Transit*, 79 Fed. Appx. at 208 (citing *Galva Foundry Co. v. Heiden*, 924 F.2d 729, 730 (7th Cir. 1991)).

In this case, there is no dispute that Sheehan was present in Illinois at the time of the filing of the action, and the admissions of Sheehan and his counsel,⁴ and the other evidence, demonstrate Sheehan's unambiguous intent to remain in Illinois indefinitely and thereby establish Illinois as his domicile and state of citizenship. Should this Court determine that questions of fact remain regarding Sheehan's domicile, then an evidentiary hearing on the issue is warranted. *Midwest Transit*, 79 Fed. Appx. at 210 (remanding and ordering an evidentiary hearing regarding the citizenship claim).

1. Sheehan Was Present In Illinois At The Time This Action Was Filed.

Defendants do not dispute, and there is absolutely no question, that Sheehan was physically present in Illinois on the date Plaintiff 24 Hour Fitness filed this action, and the first element of the test for domicile is satisfied. (**EX. A**, Sheehan Dep. 33:20-34:7.) In fact, Sheehan has been present in Illinois most days from June 30, 2008 to this date. (**EX. A**, Sheehan Dep. 33:20-41:22.) Therefore, Sheehan was present in Illinois at the time the instant action was filed, and the first element of the test for domicile is satisfied.

2. Sheehan Intends To Remain In Illinois Indefinitely.

Defendants' claim that Sheehan is a citizen of California is legally unsupportable, as both Sheehan and his counsel have admitted that Sheehan's intent is to remain in Illinois indefinitely. As this Court recognized at the hearing of July 24, 2008, Defendants' assertion that Sheehan is a citizen of California is based on the misconstruction of the difference between "residence" and

⁴ Defendants' counsel likewise has stated that Sheehan "may be hoping to move his family here" and "[i]f the Bally job goes well, he will likely move to Illinois, but he has not done so yet." (**EX. F**, K. Anderson Letter 1, July 15, 2008.)

“domicile.” (**EX. D**, Hr’g Tr. 3:9-16, July 15, 2008; **EX. E**, Hr’g Tr. 6:1-14, July 24, 2008.) Defendants’ *ex post facto* attempts to cure Sheehan’s admission under oath that his intent to make Chicago his home was fixed on June 20, 2008 should not be countenanced by this Court.

During his deposition of July 22, 2008, Sheehan admitted that his “intent at the time [he] accepted the CEO position was to move his permanent residence to Chicago.” (**EX. A**, Sheehan Dep. 22:15-18.) Sheehan formally accepted the CEO position by signing the Employment Agreement on June 20, 2008. (**EX. A**, Sheehan Dep. 47:13-14; **EX. B**, 6.) In fact, the Employment Agreement with Bally requires that Sheehan establish his “permanent residence in the Chicago area immediately, but no later than July 30, 2008.” (**EX. B**, 3.)

Sheehan’s attempts to undercut this explicit and concrete evidence of his intent through the self-serving Declaration attached to the underlying motion carries no weight, and if even allowed, actually serves to support the fact that his domicile is Illinois. “Time and time again, parties attempt to use after-the-fact self-serving affidavits to recant, retract, amend, and explain away admissions of fact made at depositions, and the courts remind them that it cannot be done.” *Mader*, 1999 U.S. Dist. LEXIS 11224 at 8-9 (disregarding defendant’s reliance on a self-serving affidavit regarding domicile (internal citations omitted)). “The black letter law is clear, ‘where [a] deposition and [an] affidavit are in conflict, the affidavit is to be disregarded unless it is demonstrable that the deposition was mistaken....’” *Id.* Sheehan’s self-serving Declaration must be disregarded here.

First, Sheehan alleges that an unidentified member of Bally’s Board of Directors “orally modified” his Employment Agreement, extending the deadline that Sheehan has to establish a local residence in Illinois to “30 days after the termination of litigation commenced against [him] by 24 Hour Fitness.” (Sheehan Decl. ¶ 9, July 23, 2008.) This oral modification does not change Sheehan’s intent, fixed on June 20, 2008, to make Chicago his home. Instead, this “oral modification” changes only the date that Sheehan has to purchase a permanent residence. That Sheehan will remain in Illinois indefinitely, and for at least as long as this litigation continues, only indicates Sheehan’s intent to make Chicago his home.

Furthermore, Sheehan’s statement that “the mortgage on [his] home is held by a bank in California” is unpersuasive and insincere; Sheehan’s California home was listed for sale on the very same day that his Declaration was executed—July 23, 2008. (**EX. C**.) Likewise, it is clear that Sheehan’s trips to California since July 1, 2008 are for the limited and explicit purpose of

relocating to Chicago—the travel records submitted by Defendants explicitly state: “Travel Purpose: RELOCATION” (**EX. G**, Sheehan Travel Records 2, 3, 5), and Sheehan’s Employment Agreement guarantees “two trips a month for up to four months for you and your spouse (i.e. a maximum of eight trips for each of you) for home visits and/or house hunting trips in the Chicago area. (**EX. B**, 3.)

Finally, Defendants’ rote recitation of the general, historical factors evaluated in determining an individuals’ domiciliary intent, when that intent is ambiguous, also falls flat, and Sheehan’s self-serving declaration cannot be used to contradict his prior sworn admissions. *See Mader*, 1999 U.S. Dist. LEXIS 11224 at 8-9. These factors are aides used only when there is no clear intent,⁵ and the U.S. Court of Appeals for the Seventh Circuit has recognized that the test can become an “arbitrary inquiry into an individual’s intent.” *Midwest Transit*, 79 Fed. Appx. at 208. This is especially true here, since the change in domicile occurred within a matter of days or even hours. The fact that Sheehan has not transferred his driver’s license, voter registration, phone service, or mail service is unavailing. (Sheehan Decl. ¶¶ 6, 8.) These circumstances simply cannot contradict Defendant’s clear intent to remain in Illinois, especially in light of the modern conveniences of national banks and ATMs, direct deposit, e-mail, faxes, and cell phones with no roaming charges. Moreover, in light of the multi-million dollar compensation package provided to Sheehan as CEO of Defendant Bally, he is not constrained by the financial considerations of most people—the motivation to rent an apartment or purchase a house is likely much lower when provided with a \$250 plus per night hotel suite for three months and four months of house hunting trips. (**EX. H**, Expense Report 2; *see also* **EX. B**, 3, stating that Bally will provide “up to 90 days of corporate apartment housing in the Chicago area during the period of time before [Sheehan has] relocated [his] household to a local residence.”) The controlling factor is Sheehan’s intent, manifested by his agreement to make Chicago his home as a condition of assuming the position of CEO of Defendant Bally.

⁵ To determine an individual’s domiciliary intent where it is unclear, which is not the case here, courts historically have looked to eight general factors: (1) place of employment; (2) location of any real property; (3) voter registration and voting practices; (4) location of residence(s); (5) membership in organizations and clubs; (6) states of vehicle registration and driver’s licenses; (7) location of financial accounts; and (8) states in which taxes are paid. *See Midwest Transit*, 79 Fed. Appx. at 206. No one factor is determinative, and evidence of any type of contact with a state is considered, including home ownership, real estate filings and holdings, marriage licenses and/or dissolutions, business interests, location of attorney(s) and/or doctor(s), and evidence of location at time of attempted service. *Id.*

In summary, Sheehan, as CEO of Chicago-based Bally, is required by his duties and his Employment Agreement to live and work in Illinois. Sheehan's admissions and actions, coupled with the statements of his counsel and other evidence, indicate that he has no intent to return to California, but instead, intends to remain in Illinois indefinitely. Sheehan is domiciled in Illinois, and, therefore, a citizen of Illinois, establishing complete diversity.

B. 24 Hour Fitness Worldwide Is Neither A Necessary Nor An Indispensable Party.

24 Hour Fitness Worldwide, the parent corporation of Plaintiff 24 Hour Fitness USA, is neither a necessary nor an indispensable party to the instant action. Defendants' arguments to the contrary are flawed and fail for several reasons. First, there is no basis to assert that 24 Hour Fitness Worldwide is a necessary party because of any "joint ownership" of trade secrets. Second, a party with only a financial interest in litigation, the only interest 24 Hour Fitness Worldwide arguably could have, is never a "necessary" party. Finally, and most egregious, Defendants' assertions that the interests of 24 Hour Fitness Worldwide are "identical" to those of Plaintiff actually support a ruling that 24 Hour Fitness Worldwide is *not* a necessary or indispensable party, because where there is identity of interests between a current party and an absent party, the current party can "adequately represent" the interests of the absent party and neither Defendant is at risk of incurring double or inconsistent obligations through the operation of *res judicata*.

As an initial matter, a ruling on a motion to dismiss for failure to join a necessary and indispensable party requires the court to accept the allegations of the complaint⁶ as true, and defendants have the burden of showing that the plaintiff has failed to join a necessary and indispensable party. *See Davis Cos. v. Emerald Casino, Inc.*, 268 F.3d 477, 479-80 n.2, 4 (7th Cir. 2001); *Ploog v. HomeSide Lending, Inc.*, 209 F.Supp.2d 863, 873 (N.D. Ill. 2002). Rule 19 sets forth a "two-step inquiry for determining when it is proper to dismiss an action for inability to obtain jurisdiction over an individual interest in the litigation." *Hansen v. Peoples Bank of Bloomington*, 594 F.2d 1149, 1150 (7th Cir. 1979); Fed. R. Civ. P. 19. Defendants only

⁶ As discussed *supra*, n. 1, the Amended Complaint is the only complaint in effect in this litigation. *See Florian, et al. v. Sequa Corp.*, No. 98 C 7459, 2002 U.S. Dist. LEXIS 24149, *9, 19-20 n.2, 9 (N.D. Ill. Dec. 16, 2002) (holding that the presence of dismissed, non-diverse defendants in the caption of an amended complaint is "irrelevant" to the determination of diversity and that an "inadvertent reference to [their] liability" in that same amended complaint did not render them necessary or indispensable parties).

cursorily address the first step, the standard for a “necessary” party, let alone *demonstrate* that 24 Hour Fitness Worldwide satisfies the second step of “indispensability.” Therefore, Defendants have not met their burden and have not demonstrated that 24 Hour Fitness Worldwide is a necessary and indispensable party.⁷

1. 24 Hour Fitness Worldwide Is Not Required To Be Joined As A “Co-Owner” Of Any Trade Secrets.

Neither Plaintiff nor its parent, 24 Hour Fitness Worldwide, has alleged that any trade secrets are “jointly owned” by both entities. Defendants’ argument to the contrary is based on a strained and adulterated interpretation of inoperable previous pleadings. The use of a “short form” to refer to a group of parties in a pleading does *not* create any “admission” as to the rights and/or obligations shared between the parties, and any previous pleading referred only to “possession” of trade secrets—not ownership. To the extent that any trade secret at issue “possessed” by Plaintiff is also possessed by its parent, no published decision in the United States has required that joint possessors of trade secrets must be joined in an action for misappropriation.

Moreover, just as multiple tort claimants are never necessary, and therefore, never indispensable parties, multiple claimants for the breach of the misappropriation of a trade secret, a tort, likewise are never necessary nor indispensable. *See Salton, Inc. v. Philips Domestic Appliances & Personal Care*, 391 F.3d 871, 877 (7th Cir. 2004) (recognizing that as with any other tort claim, multiple alleged tortfeasors in a case for misappropriation of trade secrets are not necessary nor indispensable parties). There is no legal basis to find 24 Hour Fitness Worldwide a necessary and indispensable party based on “joint ownership” of trade secrets, as evidenced by Defendants’ failure to cite any law for this proposition.

⁷ In fact, Defendants only use the word “indispensable” once, in the final paragraph of their memorandum, and give short shrift to the actual test, that an absent party only should be joined as a “necessary” party if, in its absence, (1) complete relief cannot be afforded or (2) existing parties will be subject to multiple or inconsistent liabilities. Fed. R. Civ. P. 19(a). However, even if this is satisfied, if joinder is not “feasible,” because, for example, joinder would destroy complete diversity, then the court must determine if the party is so “indispensable” to the litigation that the court cannot “in equity and good conscience” proceed in the party’s absence. *Id.* at 19(b). Defendants also cite only one decision, *Takeda v. Northwestern Nat’l Life Ins. Co.*, which states that “a party must be joined even if there is only a ‘possibility’ of such harm absent a party’s joinder.” (Mot. p. 13, *citing* 765 F.2d 815, 821 (9th Cir. 1985)). While this is moot based on the identity of interests discussed *infra*, it is important that the U.S. Court of Appeals for the Seventh Circuit has held that a “hypothetical” risk is not sufficient to establish a potential for multiple or otherwise inconsistent liabilities; there must be “substantial risk.” *Davis Cos.*, 268 F.3d at 485.

2. A Party With Only A Financial Interest Is Never “Necessary.”

A party with only “a financial interest, or an interest of convenience” is never a “necessary” party pursuant to Rule 19(a). *See Burger King Corp. v. American Nat’l Bank and Trust Co. of Chicago*, 119 F.R.D. 672, 675 (N.D. Ill. 1988). Here, the only arguable interest 24 Hour Fitness Worldwide has in this action is “financial,” as all of the claims relate to the interests of its wholly-owned subsidiary, Plaintiff 24 Hour Fitness USA, Sheehan’s former employer and the real party in interest. (*See* Compl. Ex. A.) Because 24 Hour Fitness Worldwide is not necessary, it cannot be indispensable.

3. Plaintiff Can “Adequately Represent” Its Parent And There Is No Risk Of Incomplete Relief Or Of Multiple Or Inconsistent Liabilities.

Here, Defendants themselves fervently assert, again and again, that the interests of Plaintiff and its parent, 24 Hour Fitness Worldwide, are “identical.” (Mot. 2, 3, 12, 13.) Where the interests of a current party and an absent party are identical, the current party will “adequately represent” the interests of the absent party, thereby rendering the absent party neither necessary nor indispensable. *See Etri, Inc. v. Nippon Miniature Bearing Corp.*, 1989 U.S. Dist. LEXIS 10129, *12-14 (N.D. Ill. Aug. 17, 1989) (holding that a subsidiary was an adequate representative of a parent corporation where the parent was on notice of both the action and the potential effect of a judgment on both companies’ rights in the mark at issue); *see also Extra Equipamentos E Exportacao Ltda, et al. v. Case Corp.*, 361 F.3d 359, 364 (7th Cir. 2004) (“we have great difficulty seeing how a 100 percent subsidiary could *ever* be an indispensable party”).

Additionally, *res judicata* removes any risk that 24 Hour Fitness Worldwide could expose Defendants to multiple or inconsistent obligations by bringing a subsequent action for the claims asserted here. (Mot. 12-13.) *Res judicata* precludes privies, especially parent and subsidiary corporations, from relitigating claims or issues that were or could have been raised in a previous action. *See Extra Equipamentos*, 361 F.3d at 363-64 (holding that the parent and a wholly-owned subsidiary had identical interests, and *res judicata* prohibited either from relitigating the same claims, such that the non-diverse party was not indispensable to the action). Privity between parties is established where those parties’ interests are so closely aligned that they represent the same legal interests. *Id.* Under Illinois law, it is presumed that a corporation is in privity with its controlling shareholder. *Gann v. William Timblin Transit, Inc.*, 552 F.Supp.2d 1021, 1029 (N.D. Ill. 2007) (holding that the president and controlling shareholder of

a corporation was in privity of the corporation for purposes of claim preclusion); *see also Martino v. McDonald's System, Inc.*, 598 F.2d 1079, 1083 n.7 (7th Cir. 1979) (holding that a corporation was in privity with its sole shareholder and with its president). As the 100 percent shareholder of Plaintiff, 24 Hour Fitness Worldwide is most definitely in privity with, and thereby “adequately represented” by, Plaintiff.

Defendants’ zealous avowals that the interests of Plaintiff 24 Hour Fitness USA and its parent, 24 Hour Fitness Worldwide, are “identical” in this litigation are conclusive that 24 Hour Fitness Worldwide is *not*, and can never be, a necessary nor an indispensable party to this action. The Court should, therefore, deny Defendants’ motion.

III. CONCLUSION

For the reasons set forth above, Plaintiff 24 Hour Fitness USA, Inc. requests that this Court deny the Motion Of Defendants, Michael Sheehan And Bally Total Fitness Holding Corporation, To Dismiss The First Amended Complaint For Lack Of Subject Matter Jurisdiction And/Or For Failure To Join A Necessary Party and grant Plaintiff such further relief that this Court deems just and proper under the circumstances.

* * *

Date: August 7, 2008

Respectfully submitted,

24 Hour Fitness USA, Inc.

/s/ R. Mark Halligan

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Attorneys for Plaintiff 24 Hour Fitness USA, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE TO MOTION OF DEFENDANTS, MICHAEL SHEEHAN AND BALLY TOTAL FITNESS HOLDING CORPORATION, TO DISMISS THE FIRST AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION AND/OR FOR FAILURE TO JOIN A NECESSARY PARTY** was served on the below counsel via this Court's ECF notification system August 7, 2008:

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By: /s/ Deanna R. Swits
An attorney for Plaintiff 24 Hour Fitness USA, Inc.

Exhibit List

Exhibit A	Deposition of Michael Sheehan, July 22, 2008
Exhibit B	Employment Agreement
Exhibit C	MLS Fact Sheet for 4542 Lilac Ridge Road, Contra Costa, Cal., July 23, 2008
Exhibit D	Transcript of Proceedings, Motion before the Honorable Joan Humphrey Lefkow, July 15, 2008
Exhibit E	Transcript of Proceedings, Motion before the Honorable Joan Humphrey Lefkow, July 24, 2008
Exhibit F	Letter from Kimball Anderson, July 15, 2008
Exhibit G	Michael Sheehan Travel Records
Exhibit H	Michael Sheehan Expense Report

MICHAEL SHEEHAN, JULY 22, 2008

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

24 HOUR FITNESS USA, INC., a)
California corporation,)
Plaintiff,)
vs.) No. 08 cv 3853
BALLY TOTAL FITNESS HOLDING CORP.,)
a Delaware corporation, and MICHAEL)
SHEEHAN, an individual,)
Defendants.)

The deposition of MICHAEL SHEEHAN, called for
examination, taken pursuant to the Federal Rules of Civil
Procedure of the United States District Courts pertaining
to the taking of depositions, taken before LISA SCHWAM,
CSR No. 840-4650, a Notary Public within and for the
County of Cook, State of Illinois, and a Certified
Shorthand Reporter of said state, at Suite 1900, 333 North
Wabash Street, Chicago, Illinois, commencing, on the 22nd
day of July, A.D. 2008, at 1:11 p.m.

MICHAEL SHEEHAN, JULY 22, 2008

<p style="text-align: right;">Page 18</p> <p>1 You gave me the page -- what is page 6 of the</p> <p>2 exhibit. You see that? But your signature isn't there.</p> <p>3 Where is the signed copy?</p> <p>4 A. I'm not sure where the signed copy is.</p> <p>5 Q. Okay. Let's go to number 3. Three was asking</p> <p>6 you to bring any document consisting of, or referring to</p> <p>7 or relating to, the rejection or acceptance made by</p> <p>8 Michael Sheehan to any offer of employment by Bally Total</p> <p>9 Fitness Holding Corporation and/or any entity related to</p> <p>10 Bally Total Fitness Holding Corporation.</p> <p>11 Did you bring that document with you?</p> <p>12 A. Yes.</p> <p>13 Q. Where is that document?</p> <p>14 A. You have it.</p> <p>15 Q. Oh, you're saying now Exhibit 4 is responsive to</p> <p>16 three? Where is your signature showing acceptance of</p> <p>17 employment on Exhibit 4?</p> <p>18 A. That copy does not have a signature on it.</p> <p>19 Q. Right. Well, the fact, is Mr. Sheehan, I do not</p> <p>20 have any evidence here of your acceptance of the offer of</p> <p>21 employment. There is no signed document that's been</p> <p>22 produced, correct?</p> <p>23 MR. ANDERSON: Well, you do have evidence of</p> <p>24 it. He testified that he signed it.</p>	<p style="text-align: right;">Page 20</p> <p>1 any document consisting of, or referring or relating to,</p> <p>2 the compensation benefits and/or relocation assistance</p> <p>3 provided to Michael Sheehan by Bally Total Fitness Holding</p> <p>4 Corporation and/or any entity related to Bally Total</p> <p>5 Fitness Holding Corporation.</p> <p>6 Did you bring those documents with you?</p> <p>7 A. I believe they are in document 4 -- or</p> <p>8 Exhibit 4.</p> <p>9 Q. Okay. Show me in Exhibit 4, so we have a clear</p> <p>10 record, of where you claim the compensation benefits and</p> <p>11 relocation assistance is described in Exhibit 4.</p> <p>12 Is it your testimony that the total extent of</p> <p>13 documentation you received from Bally relating to</p> <p>14 relocation assistance is set forth at pages 3 and 4 of</p> <p>15 Exhibit 4?</p> <p>16 MR. HALLIGAN: And I'd like to have that read</p> <p>17 back so the witness clearly understands the</p> <p>18 question.</p> <p>19 (Record read as requested.)</p> <p>20 BY THE WITNESS:</p> <p>21 A. Yes.</p> <p>22 BY MR. HALLIGAN:</p> <p>23 Q. So looking at page 3 of Exhibit 4, your intent</p> <p>24 in acceptance of the position of the CEO of Bally, was</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. HALLIGAN: I don't want you making speeches.</p> <p>2 MR. ANDERSON: I object to your argument. Well,</p> <p>3 You're sitting here making speeches. I'm just objecting</p> <p>4 to your incorrect statements of fact.</p> <p>5 MR. HALLIGAN: You're making speaking</p> <p>6 objections influencing the witness's testimony. I</p> <p>7 object to that. That's improper.</p> <p>8 MR. ANDERSON: Go on and ask your questions.</p> <p>9 If you're going to preface your questions with</p> <p>10 arguments, I'm going to object.</p> <p>11 MR. HALLIGAN: Well, that's fine. Just say</p> <p>12 "object."</p> <p>13 BY MR. HALLIGAN:</p> <p>14 Q. My point is, and the question on the floor is:</p> <p>15 Exhibit 4 does not have your signed signature, correct?</p> <p>16 MR. ANDERSON: That's been asked and answered</p> <p>17 now twice. Object.</p> <p>18 BY MR. HALLIGAN:</p> <p>19 Q. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you don't know where the signed signature</p> <p>22 is?</p> <p>23 A. At this point, I don't know where it is.</p> <p>24 Q. Okay. Four asks for a true and correct copy of</p>	<p style="text-align: right;">Page 21</p> <p>1 premised on your obligation and intent to move your</p> <p>2 permanent residence to the Chicago area, as reflected at</p> <p>3 page 3, correct?</p> <p>4 MR. ANDERSON: Object to the form of the</p> <p>5 question. Could you read it back, please.</p> <p>6 (Record read as requested.)</p> <p>7 BY THE WITNESS:</p> <p>8 A. Can you clarify the question, please.</p> <p>9 BY MR. HALLIGAN:</p> <p>10 Q. Can I clarify the question? Paragraph 3 --</p> <p>11 Strike that.</p> <p>12 Page 3, which you pointed out, and page 4, after</p> <p>13 you had an opportunity to review it, and you testified, is</p> <p>14 the only documentation that you received from Bally</p> <p>15 relating to relocation.</p> <p>16 We established that, correct?</p> <p>17 A. The only documentation that I received.</p> <p>18 Q. From Bally relating to relocation?</p> <p>19 A. Yes.</p> <p>20 Q. States, you agree, you being Mr. Sheehan,</p> <p>21 Michael Sheehan, you agree to move your permanent</p> <p>22 residence to the Chicago area. That was your agreement</p> <p>23 and intent at the time you agreed and accepted the</p> <p>24 position as CEO in what you now are saying was late June,</p>

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MICHAEL SHEEHAN, JULY 22, 2008

<p style="text-align: right;">Page 22</p> <p>1 correct?</p> <p>2 A. Can you clarify the question a little bit for</p> <p>3 me.</p> <p>4 Q. Let's just take the words. You agreed to move</p> <p>5 your permanent residence to the Chicago area.</p> <p>6 You understand what that means?</p> <p>7 A. Yes.</p> <p>8 Q. You agreed to move your permanent residence to</p> <p>9 the Chicago area when you accepted the position as CEO of</p> <p>10 Bally that was predicated upon your acceptance and intent</p> <p>11 to move your permanent residence to Chicago?</p> <p>12 A. By July 31st, yes.</p> <p>13 Q. Oh. So you're saying by July 31st. You're</p> <p>14 putting that qualifier on it.</p> <p>15 But your intent at the time you accepted the CEO</p> <p>16 position was to move your permanent residence to Chicago,</p> <p>17 correct?</p> <p>18 A. On the date I accepted, yes.</p> <p>19 Q. All right. Let's look at number 5.</p> <p>20 And by the way -- just following up on that --</p> <p>21 when you announced your resignation suddenly without</p> <p>22 notice to Carl Liebert on Monday morning, June 23rd, you</p> <p>23 met with him face to face to tell him you had decided to</p> <p>24 become the CEO of Bally, correct?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. You deny that you told Carl Liebert on June 23rd</p> <p>2 that you had accepted a position at Bally and you were</p> <p>3 moving to Chicago?</p> <p>4 MR. ANDERSON: And, counsel, you just asked</p> <p>5 exactly the same question.</p> <p>6 MR. HALLIGAN: It's fine. I want to get the</p> <p>7 answer.</p> <p>8 MR. ANDERSON: Well, You did get an answer.</p> <p>9 MR. HALLIGAN: I'm not sure we have a clear</p> <p>10 answer.</p> <p>11 MR. ANDERSON: It's very clear to me. He</p> <p>12 said he didn't recall saying that.</p> <p>13 MR. HALLIGAN: That's not what he said. He</p> <p>14 denied it.</p> <p>15 BY MR. HALLIGAN:</p> <p>16 Q. I want you to deny it.</p> <p>17 You did not tell Carl Liebert -- I don't want</p> <p>18 any of this not recollection stuff.</p> <p>19 Did you tell Carl Liebert when you met with him</p> <p>20 on June 23rd -- When you announced you were resigning, you</p> <p>21 told him you were moving to Chicago, correct?</p> <p>22 MR. ANDERSON: Counsel, it doesn't matter</p> <p>23 what you want or don't want. What matters is he</p> <p>24 is telling -- He is going to give you a truthful</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. ANDERSON: Object to the form of the</p> <p>2 question. Assumes facts not in evidence.</p> <p>3 Argumentative and unrelated to the citizenship</p> <p>4 issue here.</p> <p>5 MR. HALLIGAN: Well, I think we've</p> <p>6 established the citizenship issue.</p> <p>7 BY MR. HALLIGAN:</p> <p>8 Q. I just want to confirm that you met with Carl</p> <p>9 Liebert on the 23rd of June, correct?</p> <p>10 A. I believe so.</p> <p>11 Q. You told him you were moving to Chicago?</p> <p>12 A. No.</p> <p>13 Q. At that meeting, you told him that you were</p> <p>14 moving to Chicago. In fact, he asked about your wife.</p> <p>15 And you said she will just have to get used to the Chicago</p> <p>16 weather, correct?</p> <p>17 A. I don't recall that.</p> <p>18 Q. You don't recall that. You told him you were</p> <p>19 moving to Chicago on June 23rd when you met with him.</p> <p>20 MR. ANDERSON: Well, excuse him. That's been</p> <p>21 asked and answered.</p> <p>22 MR. HALLIGAN: He denied it.</p> <p>23 MR. ANDERSON: Do you have a different question?</p> <p>24 BY MR. HALLIGAN:</p>	<p style="text-align: right;">Page 25</p> <p>1 answer.</p> <p>2 MR. HALLIGAN: I want a truthful answer.</p> <p>3 MR. ANDERSON: You're berating him.</p> <p>4 MR. HALLIGAN: I'm not berating him. You're</p> <p>5 interrupting the deposition.</p> <p>6 THE REPORTER: One at a time, please.</p> <p>7 MR. ANDERSON: And I am going one at a time. Counsel</p> <p>8 keeps interrupting me.</p> <p>9 MR. HALLIGAN: You're making speaking</p> <p>10 objections which are improper. Simple question.</p> <p>11 I'm going to get the answer.</p> <p>12 MR. ANDERSON: Can I finish my remarks before</p> <p>13 you interrupt me again?</p> <p>14 MR. HALLIGAN: No. Honestly, I mean, all you</p> <p>15 have to do is object, right?</p> <p>16 MR. ANDERSON: So you're just going to keep</p> <p>17 interrupting me?</p> <p>18 MR. HALLIGAN: No. I mean, If you really</p> <p>19 want to say something more, go ahead.</p> <p>20 MR. ANDERSON: I do want to say something.</p> <p>21 MR. HALLIGAN: Go ahead.</p> <p>22 MR. ANDERSON: I want to say that your</p> <p>23 argument and speechmaking on the record is</p> <p>24 improper, and I object to it. He has answered</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. Well, then, who paid for it if it wasn't Bally?</p> <p>2 MR. ANDERSON: Counsel, he has answered the</p> <p>3 question three times now. And furthermore, I</p> <p>4 haven't a clue what this has to do with the</p> <p>5 citizenship issue. And until you explain to me,</p> <p>6 I'm not going to allow you to ask the question a</p> <p>7 fourth time.</p> <p>8 BY MR. HALLIGAN:</p> <p>9 Q. Well, let's just keep it you're in Chicago on</p> <p>10 June 30th because this is a special deposition. I'll have</p> <p>11 the opportunity to take your deposition again in this</p> <p>12 litigation.</p> <p>13 We'll --</p> <p>14 MR. ANDERSON: Maybe, maybe not. Why don't</p> <p>15 you just stick with the questions within the</p> <p>16 subject matter today.</p> <p>17 MR. HALLIGAN: I think I'm within the subject</p> <p>18 matter. I'm testing the credibility and demeanor</p> <p>19 and memory of this witness, and I'm entitled to do</p> <p>20 that, Counsel.</p> <p>21 BY MR. HALLIGAN:</p> <p>22 Q. Okay. Let's just take this back. You're in</p> <p>23 Chicago now on June 30th. And it's a Monday night.</p> <p>24 You've arrived on a commercial airliner from California.</p>	<p style="text-align: right;">Page 32</p> <p>1 in Chicago, in Illinois. I've established you stayed at</p> <p>2 the Sheraton hotel that's close to the corporate</p> <p>3 headquarters of Bally.</p> <p>4 Okay. My next question is: How many other</p> <p>5 nights did you stay at the Sheraton once you were here on</p> <p>6 the 30th of June? Did you stay there, for example, on the</p> <p>7 night of July 1st?</p> <p>8 A. Yes.</p> <p>9 Q. Did you stay there the night of July 2nd?</p> <p>10 A. Yes.</p> <p>11 Q. You stay there the night of July 3rd?</p> <p>12 A. No.</p> <p>13 Q. Where did you stay on the night of July 3rd?</p> <p>14 A. At my home in California.</p> <p>15 Q. Well, you had to fly back to California,</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So when did you leave to go back to</p> <p>19 California?</p> <p>20 A. July 3rd.</p> <p>21 Q. At what time on July 3rd?</p> <p>22 A. I don't recall.</p> <p>23 Q. At the end of the day? At night? After your</p> <p>24 workday?</p>
<p style="text-align: right;">Page 31</p> <p>1 Did anybody else come with you?</p> <p>2 A. No.</p> <p>3 Q. No one from your family?</p> <p>4 A. No.</p> <p>5 Q. Where did you stay after you arrived at the</p> <p>6 airport?</p> <p>7 A. I believe it's called -- a Sheraton hotel.</p> <p>8 Q. Sheraton hotel located where?</p> <p>9 A. Very close to the Bally headquarters. I'm not</p> <p>10 sure the address or city it is in.</p> <p>11 Q. And you stayed there the evening of the 30th of</p> <p>12 June?</p> <p>13 A. Correct.</p> <p>14 Q. And how many other nights did you stay there</p> <p>15 other than the 30th of June?</p> <p>16 A. Can you clarify the time frame you're referring</p> <p>17 to.</p> <p>18 Q. Well, Mr. Sheehan, it's Monday night. You've</p> <p>19 arrived in Chicago. You're to report for work as the CEO</p> <p>20 of Bally on Tuesday, July 1st.</p> <p>21 You arrive in the airport, I assume, in the</p> <p>22 evening on June 30th by your testimony, correct?</p> <p>23 A. Correct.</p> <p>24 Q. You need to have a place to sleep. You're now</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Yes. After my workday.</p> <p>2 Q. Okay. So it would have been in the evening.</p> <p>3 You flew back to California on the evening of July 3rd,</p> <p>4 correct?</p> <p>5 A. Early evening, yes.</p> <p>6 Q. All right. So when did you return to Chicago?</p> <p>7 Your counsel's pointing to a document and showing his</p> <p>8 finger.</p> <p>9 Look, just -- I ask that you just answer the</p> <p>10 questions I'm asking, okay?</p> <p>11 MR. ANDERSON: Okay. He's got the itinerary</p> <p>12 in front of him.</p> <p>13 MR. HALLIGAN: I'm testing his demeanor and</p> <p>14 credibility and his recollection.</p> <p>15 MR. ANDERSON: Oh, for Pete's sake, you're</p> <p>16 just wasting time. You've got the itinerary right</p> <p>17 in front of you.</p> <p>18 MR. HALLIGAN: I don't have any itinerary.</p> <p>19 BY MR. HALLIGAN:</p> <p>20 Q. Put that document aside and just answer my</p> <p>21 questions. We'll come back to the document.</p> <p>22 When did you return to Chicago from</p> <p>23 California?</p> <p>24 A. Late Monday evening.</p>

9 (Pages 30 to 33)

MICHAEL SHEEHAN, JULY 22, 2008

<p style="text-align: right;">Page 34</p> <p>1 Q. And when you arrived on Monday evening, where 2 did you stay? 3 A. At the same hotel. 4 Q. The Sheraton hotel. 5 A. I believe that's what it's called. 6 Q. So when you say late Monday evening, it's 7 July 7, correct? 8 A. Yes. 9 Q. Okay. And on July 8 -- did you go into the 10 corporate headquarters of Bally at any time on July 7th? 11 A. No. 12 Q. Okay. On July 8 you reported for work as the 13 CEO? 14 A. Yes. 15 Q. And where did you stay on the evening of 16 July 8? 17 A. At the same hotel, which is actually called the 18 Renaissance -- That's a correction. Not the Sheraton. 19 Q. Getting a chance to look at this documentation 20 now, you know it was a Renaissance hotel close to the 21 Bally corporate headquarters? 22 A. No. Just recalling that Sheraton didn't seem 23 right. 24 Q. But my point is, the hotel you stayed at, we've</p>	<p style="text-align: right;">Page 36</p> <p>1 because -- since you're going to continue to point to it. 2 Let me just get it marked. 3 MR. ANDERSON: Counsel, there you go again, 4 you interrupted me mid-sentence. I think it's 5 professionally rude and, frankly, incompetent for 6 you to keep interrupting me. 7 It is the same document he produced to you at 8 the outset of the deposition. And I would appreciate it 9 if you would stop interrupting me mid-sentence. 10 MR. HALLIGAN: Well, the record will reflect 11 I'm not interrupting you. You talk, you stop, and 12 then you indicate you're still making a speaking 13 objection, which I think is improper. 14 But my point is that the only document that's 15 been marked is Exhibit 4. And the document that you gave 16 to the witness, and the witness put in front of him, I 17 believe, is a separate document. And I'd like to mark it 18 as an exhibit now. 19 He has the only copy? How did it get over 20 there? 21 MR. ANDERSON: The fact is your recollection 22 is incorrect. He handed you all these documents. 23 You then shoved them back in front of him when 24 he -- as you began asking questions about it.</p>
<p style="text-align: right;">Page 35</p> <p>1 established is the same hotel? 2 A. Correct. 3 Q. And it's close to the Bally headquarters? 4 A. That's correct. 5 Q. Where you work? 6 A. That is correct. 7 Q. But now you believe the name of the hotel is a 8 Renaissance hotel, as opposed to a Sheraton hotel, 9 correct? 10 A. Yes. 11 Q. That's after looking at this document your 12 counsel put in front of you, correct? 13 MR. ANDERSON: I didn't put it in front of 14 him. 15 MR. HALLIGAN: I don't have the document in front of 16 me. I'm trying to ask the questions of the witness. 17 We'll get back to whatever else is in that pile. 18 I only have one set of it. I haven't marked it 19 as an exhibit yet. Haven't looked at it. 20 BY MR. HALLIGAN: 21 Q. I'm just trying to find out where you were 22 physically staying in Illinois and the point is that you 23 now say it's the Renaissance. 24 MR. HALLIGAN: In fact, let's just mark this document</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. HALLIGAN: I didn't shove it back in 2 front of him. I gave it to him so he could select 3 a document responsive to a document request. 4 In any event, let's mark as Exhibit 5 another 5 document. We'll get some foundation on it. 6 (Exhibit 5 marked as requested.) 7 BY MR. HALLIGAN: 8 Q. Okay. Handing you what now has been marked for 9 purposes of identification as Sheehan Exhibit 5 is an 10 e-mail communication that came from the Gant Travel 11 Management at ganttravel.com. 12 And it shows at the bottom of the first page of 13 this exhibit that the hotel where you stayed on the 14 evening of June 30, 2008, is the Renaissance O'Hare 15 located at 8500 West Bryn Mawr Avenue, Chicago, Illinois, 16 60631, which is close to the Bally headquarters. 17 This is a confirmation of the hotel that, in 18 fact, you did stay at, correct? 19 A. Yes. 20 Q. All right. Now, you came back in the evening on 21 July 7. And it's your testimony you stayed at this same 22 hotel again, correct, and reported for work on July 8th as 23 the CEO of Bally, correct? 24 A. Yes.</p>

10 (Pages 34 to 37)

MICHAEL SHEEHAN, JULY 22, 2008

<p style="text-align: right;">Page 38</p> <p>1 Q. And that evening on Tuesday, the 8th, you stayed 2 again at the Renaissance hotel? 3 A. Yes. 4 Q. Okay. Wednesday, July 9th, where did you 5 stay? 6 A. At the Renaissance. 7 Q. Thursday, July 10th, where did you stay? 8 A. At the Renaissance. 9 Q. Okay. So that Friday, July -- Let's see. 10 Thursday is the 10th. 11 So Friday, July 11th, where did you stay? 12 A. At home in California. 13 Q. So you left on Friday in the evening -- on 14 Friday evening and returned to California? 15 A. Yes. I believe it was the evening. 16 Q. In other words, you worked all day at Bally on 17 the 11th, and then in the evening you returned to 18 California on Friday, the 11th? Is that your testimony? 19 MR. ANDERSON: Object to the form of the 20 question. His testimony is what it was. It's not 21 proper to be asking him what his testimony is. 22 BY MR. HALLIGAN: 23 Q. I'm trying to confirm when you left for 24 California on the 11th.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. So if it was Monday morning, that would 2 mean you came in late on the 13th. If it was Monday 3 afternoon, that means you came in on the morning from 4 California. 5 A. That's correct. 6 Q. So the evening of the 14th, where did you 7 stay? 8 A. At the Renaissance. 9 Q. Okay. Tuesday, the 15th, you report to work as 10 the CEO of Bally at their corporate headquarters? 11 A. Yes. 12 Q. And where did you stay on the evening of the 13 15th? 14 A. At the Renaissance. 15 Q. On Wednesday, July 16th, you report as the CEO 16 of Bally -- report for work? 17 A. Yes. 18 Q. And where did you stay on the evening of the 19 16th? 20 A. At the Renaissance. 21 Q. On Thursday, July 17, you reported to work as 22 the CEO of Bally? 23 A. Yes. 24 Q. And where did you stay the evening of the</p>
<p style="text-align: right;">Page 39</p> <p>1 Was it after the workday? 2 A. I believe I left around 4 o'clock -- left the 3 office around 4 o'clock. 4 Q. And headed to O'Hare Airport to return to 5 California on a commercial flight? 6 A. Yes. 7 Q. And then when did you return to Chicago? 8 I noticed you're looking at Exhibit 5. Does 9 that help answer the question. 10 A. It doesn't because it doesn't have my travel 11 itinerary on that date. 12 Q. I assume that travel agency would have your 13 itinerary for that date? 14 A. Yes. 15 MR. ANDERSON: Object to the form of the 16 question. 17 BY MR. HALLIGAN: 18 Q. The question is: When did you return from 19 California? Was it Sunday, July 13th? 20 A. I don't recall if it was Sunday or Monday. 21 Q. Well, do you recall when you reported for work 22 on Monday, the 14th? 23 A. I don't recall if it was early afternoon or if 24 it was Monday morning on the 13th.</p>	<p style="text-align: right;">Page 41</p> <p>1 17th? 2 A. At my home in California. 3 Q. Okay. So when did you go back to California? 4 On the evening of the 17th after work? 5 A. I believe it was around 4 o'clock. 6 Q. All right. And when did you return to 7 Chicago? 8 A. Monday afternoon. 9 Q. July 21st? 10 A. Yes. 11 Q. And did you go into work at Bally when you 12 returned on Monday, July 21st? 13 A. Yes. 14 Q. And today is July 22nd. Did you report to work 15 at Bally this morning? 16 A. Yes. 17 Q. Have you stayed at any other location other than 18 the Renaissance hotel in Chicago, Illinois, since 19 June 30? 20 A. No. 21 Q. And where are you staying tonight? 22 A. At the Renaissance. 23 Q. And these expenses at the Renaissance, all of 24 these expenses have been paid by Bally?</p>

11 (Pages 38 to 41)

MICHAEL SHEEHAN, JULY 22, 2008

<p style="text-align: right;">Page 46</p> <p>1 signature page. It appears that the paralegal 2 made a mistake and redacted the signature. 3 But I now have it here. It's also dated, and 4 I'll tender you now the signature page. 5 MR. HALLIGAN: Okay. So let's make this 6 Exhibit 4-A. It is now the signed page 6. 7 (Exhibit 4-A marked as requested.) 8 BY MR. HALLIGAN: 9 Q. I'm handing you, Mr. Sheehan, what I have marked 10 as Exhibit 4-A. Is that a true and correct copy of your 11 signature on Exhibit 4-A? 12 A. Yes. 13 Q. And June 20, 2008, is the date upon which you 14 accepted the conditions of employment to become the CEO of 15 Bally? 16 A. No. 17 Q. Well, it's dated June 20. 18 A. Yes. 19 Q. So when you signed it dated June 20, were you 20 accepting employment as the CEO of Bally on that date? 21 A. No. 22 Q. Well, it says, "Accepted this 20th day of 23 June 2008." 24 Can you state for the record what was accepted</p>	<p style="text-align: right;">Page 48</p> <p>1 course. 2 (Proceedings adjourned at 2:48 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 47</p> <p>1 on that date. 2 MR. ANDERSON: Object to the form of the 3 question. 4 BY THE WITNESS: 5 A. That's the date I wrote in, the 20th. 6 BY MR. HALLIGAN: 7 Q. No. You say it says, "Accepted this blank day 8 of June 2008?" 9 Do you see that? 10 A. Yes. 11 Q. And you signed "Michael Sheehan," correct? 12 A. Yes. 13 Q. What did you accept on June 20, 2008? 14 A. The agreement. 15 MR. HALLIGAN: Thank you. I have no further 16 questions. That concludes the deposition. 17 MR. ANDERSON: Signature is reserved. 18 You have the right to review the transcript and 19 to make sure that the court reporter has accurately 20 transcribed everything and to make sure that you actively 21 spoke. And she will provide you with an errata page. If 22 you see a mistake, you can submit an errata. And if 23 everything is okay, you can sign it. 24 So that will all be coming to you soon in due</p>	<p style="text-align: right;">Page 49</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION 4 24 HOUR FITNESS USA, INC., a) 5 California corporation,) 6 Plaintiff,) 7 vs.)No. 08 cv 3853 8 BALLY TOTAL FITNESS HOLDING CORP.,) 9 a Delaware corporation, and MICHAEL) 10 SHEEHAN, an individual,) 11 Defendants.) 12 13 I hereby certify that I have read the foregoing 14 transcript of my deposition given at the time and place 15 aforesaid, consisting of Pages 1 to 48, inclusive, and I 16 do again subscribe and make oath that the same is a true, 17 correct, and complete transcript of my deposition so given 18 as aforesaid, and includes changes, if any, so made by me. 19 20 MICHAEL SHEEHAN 21 SUBSCRIBED AND SWORN TO 22 before me this day 23 of , A.D. 2008. 24 Notary Public</p>

13 (Pages 46 to 49)

BALLY TOTAL FITNESS HOLDING CORPORATION
8700 WEST BRYN MAWR
CHICAGO, ILLINOIS 60631

PERSONAL AND CONFIDENTIAL

Michael Sheehan

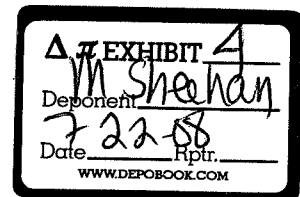
Re: Offer of Employment

Dear Mike:

On behalf of the Board of Directors of Bally Total Fitness Holding Corporation (the "Company"), I am pleased to confirm to you the following offer to serve as the Company's Chief Executive Officer.

and your office will be located
in Chicago, Illinois.

REDACTED



Michael Sheehan

Page 2

REDACTED

Michael Sheehan

Page 3

REDACTED

Relocation Benefit: Should you sell your San Francisco area residence within 18 months of the Start Date and the net sales price is less than your cost of acquiring that residence, plus documented capital improvements of approximately \$50,000, the Company will reimburse you for the difference. If you are due the difference between the sales price and your cost of acquiring that residence, such payment will be grossed-up to cover taxes due on this payment. This benefit will be capped at \$1 million, inclusive of any such tax gross up. You agree to move your permanent residence to the Chicago area promptly following the Start Date, but in any event not later than July 30, 2008. In addition, you will be eligible for the following relocation benefits:

- You will be provided \$10,000 net to cover all of your living expenses, any miscellaneous relocation expenses, and temporary housing expenses beyond the first 90-day period provided by the Company.
- During your interim living period, the Company will pay for two trips a month for up to four months for you and your spouse (i.e., a maximum of eight trips for each of you) for home visits and/or house hunting trips in the Chicago area.
- You will be provided up to 90 days of corporate apartment housing in the Chicago area during the period of time before you have relocated your household to a local residence.

Michael Sheehan

Page 4

- The Company will cover reasonable and customary closing costs (excluding discount points, hazard insurance, deposits and other prepaid expenses) associated with the sale of your existing primary residence in San Francisco and the purchase of a new residence in the Chicago area.
- A moving company approved by the Company will arrange for and cover the costs of packing and transporting your household goods and vehicles in accordance with company policy. All taxable relocation benefits will be grossed up in accordance with the Company's relocation policy.
- If you voluntarily leave the Company or are terminated for cause within 12 months from the date of the last relocation payment to you related to the sale of your San Francisco area residence, you will be required to reimburse the Company for all related payments.

REDACTED

Michael Sheehan

Page 5

REDACTED

Michael Sheehan

Page 6

REDACTED

Sincerely,

BALLY TOTAL FITNESS HOLDING
CORPORATION



Gene Davis
For the Board of Directors
Bally Total Fitness Holding Corporation

cc: Board of Directors

Accepted this ___ day of June, 2008

Michael Sheehan

06/22/2008 16:27 925-277-1495

FEDEX KINKO'S 5154

PAGE 01

Michael Sheehan
June 20, 2008
Page 6


Re: [REDACTED]

Redacted

I trust these terms are acceptable to you and I look forward to working with you. Please indicate your acceptance of the above terms by signing in the space indicated below and returning a fully executed copy to me.

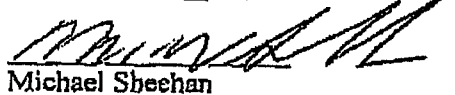
Sincerely,

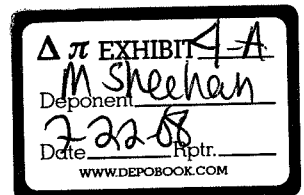
BALLY TOTAL FITNESS HOLDING
CORPORATION


Gene Davis
For the Board of Directors
Bally Total Fitness Holding Corporation

cc: Board of Directors

Accepted this 20 day of June, 2008


Michael Sheehan



**4542 Lilac Ridge Rd
SAN RAMON, CA 94582**

Price: \$2,380,000

BEDS: 5
BATHS: 5.5
SQ. FT.: 6,819
\$/SQ. FT.: \$349
LOT SIZE: 0.26 Acres
PROPERTY TYPE: Single
Family
Detached
PROPERTY STYLE: Spanish
YEAR BUILT: 2001
STORIES: 2
VIEW: Canyon, City
Lights, Golf
Course,
Hills,
Panoramic
NEIGHBORHOOD: BRIDGES
AREA: San Ramon
COUNTY: Contra
Costa
MLS#: 40357797
SOURCE: EBRD
STATUS: Active
ON REDFIN: 15 days

Sweeping views of The Bridges Golf Course & beyond. Former Model & Award-winning Shapell home at Summit Bridge. 5 bed suites + office + wine tasting room. Master Suite has retreat, exercise room, 4 closets, balcony. Courtyard w fountain and fireplace. Separate living quarters with kit, w/ d.

BEDROOM INFORMATION

- 4 Bedrooms on Upper Level
- 1 Bedroom on Street Level

ROOMS

- # of Rooms: 16
- In-Law Quarters
- Office
- Other Additional Rooms (See Remarks)

FLOORING INFORMATION

- Tile
- Wall-to-Wall Carpeting
- Wood

BATHROOM INFORMATION

- 4 Baths on Upper Level
- 1.5 Baths on Street Level

FIREPLACE INFORMATION

- # of Fireplaces: 4
- In Dining Room
- In Family Room
- In Living Room
- Other (See Remarks)

KITCHEN FEATURES

- Breakfast Nook
- Stone Counter
- Dishwasher
- Double Oven

MASTER BATHROOM FEATURES

- Bidet
- Solid Surface Counter
- Split Bath
- Stall Shower
- Tub with Jets
- Other Features (See Remarks)

LAUNDRY INFORMATION

- On Street Level
- Laundry Room

ADDITIONAL EQUIPMENT

- Central Vacuum
- Fire Sprinklers
- Garage Door Opener

HEATING & COOLING

- 2+ Zone Heating (Forced Air)
- 2+ Zone A/C (Central)

PARKING INFORMATION

- # of Garage Spaces: 3
- Has Garage
- Attached Garage

LOT INFORMATION

- Lot Size (Acres): 0.26
- APN: 222160001
- Premium Lot

HOMEOWNERS ASSOCIATION INFORMATION

- Has Homeowners Association
- Fee: \$46.00
- Monthly
- Transfer Fees: Paid by Seller
- Name: PEACHTREE
- Phone: 800-547-3224

DISCLOSURES

- Other Disclosures (Call/See Agent)

- Garbage Disposal
- Island
- Microwave
- Built-in Range/Oven
- Trash Compactor
- Other Kitchen Features (See Remarks)

WATER & SEWER INFORMATION

- Public Sewer System
- Public Water

POOL INFORMATION

- Other (See Remarks)

LOCATION INFORMATION

- Thomas Brothers Guide: 673G1
- Census Tract: 3451.09
- Cross Street: Shoreline
- Directions to Property: Crow Canyon, Shoreline, Lilac Ridge

HOMEOWNERS ASSOCIATION DOCUMENTS

- Budget
- Bylaws
- CC&R's
- Rules and Regulations

SCHOOL INFORMATION

- Elementary School: Coyote Creek Elementary
- Middle School: Call School District
- High School: Call School District
- School District: San Ramon (925) 552-5500

- Built-In Stereo Speakers
- Other (See Remarks)

BUILDING INFORMATION

- Slab Foundation
- Tile Roof
- Stucco Exterior
- Builder/Architect: Shapell
- Model: Santa Barbara

YARD DESCRIPTION

- Fenced Yard
- Automatic Sprinklers
- Other (See Remarks)

PROPERTY INFORMATION

- Sq. Ft. Source: Public Records

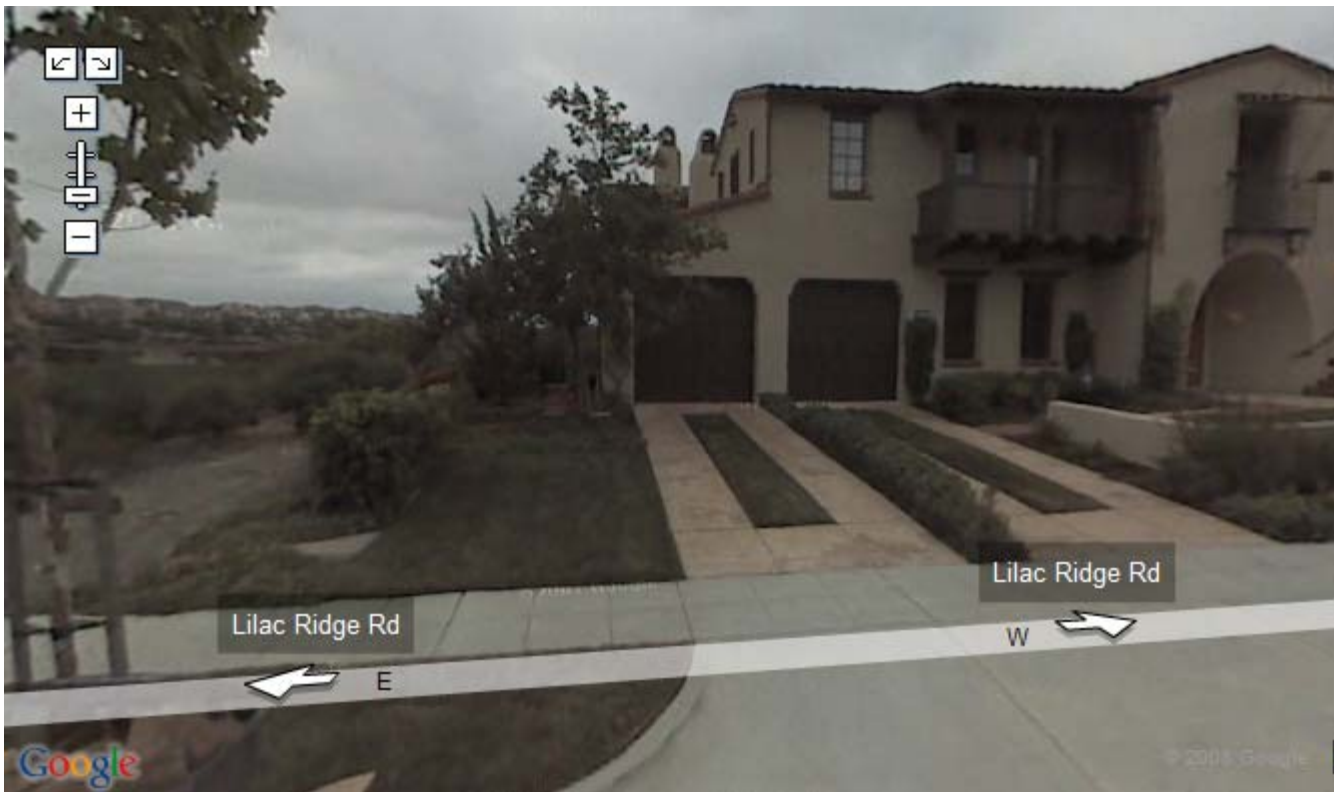
HOMEOWNERS ASSOCIATION FEATURES

- Common Area Maintenance
- Management Fee
- Other Benefits (See Remarks)
- Greenbelt
- Playground
- Pool
- Tennis Court(s)
- Other Amenities (See Remarks)

LISTING INFORMATION

- Previous Price: \$2,380,000.00
- Original Price: \$2,380,000.00
- List Date: Wednesday, July 23, 2008

[Book a tour](#). It's easy & there's no obligation.



Take the [nerdiest home-buying class](#). Get data-driven tips & local pricing trends.

Listing Price History

Redfin has no price changes for this listing.

Sales History

Date	Price	Appreciation
May 09, 2005	\$2,400,000	--
Jun 29, 2007	\$2,521,000	2.3%/yr

Source: Public Records

Property Tax

	Taxable Value
Land	\$891,865
Additions	\$1,372,635
Total	\$2,264,500

2007 Property Tax: \$26,347

Source: Public Records

Home Value Estimates

	Low	Estimate	High
Zillow	\$1,754,400	<u>\$2,193,000</u>	\$2,390,370
Eppraisal	\$1,646,310	<u>\$1,936,835</u>	\$2,227,361
Cyberhomes	\$2,054,158	<u>\$2,282,398</u>	\$2,624,758

[Zillow.com](#) 1 yr | [5 yr](#) | [10 yr](#)








[90% of homes](#) in the zip code have a

value lower than this home. See more charts at Zillow.com

What should you offer for this home?

Nearby Similar Listings

Closest listings of similar size and type:

No Photo Available 	\$1,705,900 4518 LILAC RIDGE Rd	0.06 miles 5 bd / 4.5 ba 5,570 Sq. Ft.
	\$1,799,000 4506 LILAC RIDGE Rd	0.1 miles 5 bd / 5.5 ba 6,081 Sq. Ft.
No Photo Available 	\$2,150,000 5332 Cypress Hawk Ct	0.15 miles 6 bd / 5.5 ba 6,819 Sq. Ft.
	\$1,795,000 5452 HEATHERLAND Dr	0.23 miles 5 bd / 4.5 ba 5,228 Sq. Ft.
	\$2,099,000 5545 Satin Leaf Way	0.28 miles 5 bd / 4.5 ba 5,228 Sq. Ft.

Range: \$1,705,900 - \$2,150,000

Average: \$332/Sq. Ft.

This home at \$332/Sq. Ft.: \$2,266,977

Nearby Similar Sales

Closest homes of similar size and type, and sold within the past six months:

\$1,615,000 4518 Lilac Ridge Rd Sold on Jun 12, 2008	0.06 miles 4 bd / 4 ba 5,443 Sq. Ft.
\$2,287,500 5343 Cypress Hawk Ct Sold on Apr 17, 2008	0.15 miles 5 bd / 4 ba 6,819 Sq. Ft.
\$1,753,125 5332 Cypress Hawk Ct Sold on Jul 16, 2008	0.15 miles 5 bd / 4 ba 6,819 Sq. Ft.

Range: \$1,615,000 - \$2,287,500

Average: \$296/Sq. Ft.

This home at \$296/Sq. Ft.: \$2,021,288

Link to this page at <http://www.redfin.com/CA/San-Ramon/4542-Lilac-Ridge-Rd-94582/home/1214695>

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

24 HOUR FITNESS USA, INC., a)
California corporation, et al.,)
Plaintiffs,)
vs.) No. 08 C 3853
BALLY TOTAL FITNESS HOLDING CORP., a)
Delaware corporation and MICHAEL)
SHEEHAN, an individual,) Chicago, Illinois
Defendants.) July 15, 2008
9:30 A.M.

TRANSCRIPT OF PROCEEDINGS - Motion
BEFORE THE HONORABLE JOAN HUMPHREY LEFKOW

APPEARANCES:

For the Plaintiffs: LOVELLS LLP
330 North Wabash Avenue
Suite 1900
Chicago, Illinois 60611
BY: MR. ROBERT MARK HALLIGAN

For the Defendants: WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, Illinois 60601-9703
BY: MR. KIMBALL RICHARD ANDERSON

PAMELA S. WARREN, CSR, RPR
Official Court Reporter
219 South Dearborn Street
Room 1928
Chicago, Illinois 60604
(312) 294-8907

1 (Proceedings had in open court.)

2 THE CLERK: 08 C 3853, 24 Hour Fitness USA versus
3 Bally Total Fitness.

4 MR. HALLIGAN: Good morning, your Honor. Mark
5 Halligan on behalf of the plaintiff 24 Hour Fitness USA.

6 THE COURT: Good morning.

7 MR. ANDERSON: Kimball Anderson, your Honor, good
8 morning, appearing on behalf of the defendants Bally Total
9 Fitness Holding Corporation and Michael Sheehan.

10 THE COURT: Good morning.

11 MR. HALLIGAN: Your Honor, just a few minutes ago
12 outside the courtroom, Mr. Anderson, who entered his appearance
13 yesterday, has raised the issue of subject matter jurisdiction
14 and taking the position that there may be an issue regarding
15 whether or not Michael Sheehan is a resident domiciliary in the
16 State of Illinois.

17 And I told Mr. Anderson that if we have to go to Cook
18 County Chancery Division, we should probably determine this
19 right away. I have asked that Mr. Sheehan be produced for a
20 special emergency deposition so we can get the facts nailed
21 down and then the Court can make a ruling on whether or not the
22 Court believes it has subject matter jurisdiction or not.

23 I believe it is a fact intensive motion, and I would
24 like to nail down the facts. It would be a short deposition.
25 Mr. Sheehan I know is in town. He's the chief executive

1 officer of Bally. We personally served him at Bally. So
2 hopefully we can produce him for a deposition.

3 MR. ANDERSON: I agree with that suggestion for
4 resolving the issue. And here is the issue: The plaintiff is
5 a California corporation, resident of California. And
6 Mr. Sheehan, I believe, is also a resident of California. He's
7 lived there for nine years. And he has been hired as the new
8 CEO of Bally, but he has not yet moved here.

9 And I looked at the authorities and the statute last
10 night. The statute, 28 USC 1332, does not define what a
11 citizen is, but the Courts have weighed in is that you look at
12 where their principal residence is, voting and driver's
13 license, utilities, phone service. And although he may be
14 hoping to move his family here, as of the date of the filing of
15 the complaint, he remains a resident of California. The
16 complaint was filed on July 8th, 2008.

17 So I told counsel, certainly he didn't have to accept
18 my word for it, I would get to him the facts today as I
19 understand them. And if he would like to pursue a short
20 jurisdictional deposition, I'll try to make that happen this
21 week as soon as possible.

22 And then counsel can make an informed decision as to
23 whether we need to ask your Honor to resolve the jurisdictional
24 issue or not. But as we all know Rule 12 -- I think it is --
25 (a) (3) says that at any time it becomes apparent to the Court

1 that there is a lack of subject matter jurisdiction, counsel
2 should call it to the attention of the Court, and the Court
3 should dismiss the case.

4 So we're going to try to resolve this among ourselves
5 within the next couple of days, and then we will report back to
6 your Honor.

7 THE COURT: All right.

8 MR. HALLIGAN: Your Honor, I just -- for the record,
9 the rules that counsel state were -- those were at one time the
10 rules, but the Courts now take cognizance of the world in which
11 we live in where you are the COO of a corporation in California
12 one day, and then the next week you move to Chicago where you
13 become a CEO. And the Courts look at whether the defendant is
14 present in the jurisdiction with an intent to stay. And I
15 would respectfully submit that a CEO with the world
16 headquarters here in Chicago, it is hard for me to believe that
17 he is going to attempt to stay in California.

18 So the only point I want to make for the Court is this
19 is not -- this is not something that can -- I mean, there are
20 facts here.

21 THE COURT: Right. Well, I'll continue the motion for
22 one week then. Is that all right?

23 MR. HALLIGAN: Yes.

24 MR. ANDERSON: That will be fine.

25 THE COURT: Okay.

1 MR. HALLIGAN: Thank you very much.

2 MR. ANDERSON: See you at 9:30 on Tuesday.

3 THE CLERK: July 22nd.

4 (Which concluded the proceedings in the above-entitled
5 matter.)

6 C E R T I F I C A T E

7
8 I hereby certify that the foregoing is a transcript of
9 proceedings before the Honorable Joan Humphrey Lefkow on
10 July 15, 2008.

11 DATED: July 16, 2008
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

24 HOUR FITNESS USA, INC., a
California corporation, and
24 HOUR FITNESS WORLDWIDE,
INC., a Delaware corporation,

Plaintiffs,

vs.

BALLY TOTAL FITNESS HOLDING
CORPORATION, a Delaware
corporation, and MICHAEL
SHEEHAN, an Individual,

Defendants.

No. 08 C 3853

Chicago, Illinois
July 24, 2008
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE JOAN HUMPHREY LEFKOW

APPEARANCES:

For the Plaintiff:

LOVELLS
MR. ROBERT M. HALLIGAN
330 North Wabash Avenue
Chicago, Illinois 60611
312-832-4420

For the Defendant:

WINSTON & STRAWN
MR. KIMBALL R. ANDERSON
35 West Wacker Drive
Chicago, Illinois 60601
312-558-5600

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Court Reporter:

**FEDERAL OFFICIAL COURT REPORTER
MS. KRISTA FLYNN BURGESSON
219 South Dearborn Street
Chicago, Illinois 60604
312-435-5567**

1 THE CLERK: 08 C 3853, 24 Hour Fitness versus Bally
2 Total Fitness Holding.

3 MR. HALLIGAN: Good morning, your Honor. Mark
4 Halligan for the plaintiff.

5 THE COURT: Good morning.

6 MR. HALLIGAN: You will recall -- I'm sorry.

7 MR. ANDERSON: Good morning, your Honor. Kimball
8 Anderson on behalf of the defendants, Mr. Sheehan and Bally
9 Fitness.

10 THE COURT: Good morning.

11 MR. HALLIGAN: I apologize.

12 Your Honor, you will recall that we were here on July
13 15th.

14 THE COURT: Yes.

15 MR. HALLIGAN: That was on our motion for expedited
16 discovery and the motion to set a preliminary injunction
17 hearing date, and the issue of subject matter jurisdiction was
18 raised, and we asked for a week to address that issue.

19 We took Mr. Sheehan's deposition on Tuesday, and we
20 established that he was physically present in the jurisdiction
21 in Illinois on July 7, 2008, when the complaint was filed, and
22 we also established that -- and fixed the date of June 20,
23 2008, as the date of his intent to make Illinois his home for
24 when he executed the contract from the Board of Directors of
25 Bally Total Fitness, which required him to have his office in

1 Chicago, Illinois, and live and work in Chicago, Illinois.

2 THE COURT: Okay.

3 MR. HALLIGAN: So, if there is still an issue on
4 jurisdiction, your Honor, we can brief that issue, but in the
5 meantime, based on our continuing investigation, we have filed
6 a motion for leave to file a second amended complaint in
7 starter to add a claim under the Computer Fraud and Abuse Act
8 for actionable claims under the Computer Fraud and Abuse Act
9 which gives this Court jurisdiction under 28 USC 1331 and, of
10 course, jurisdiction over the pendent State law claims under
11 28 USC 1367.

12 My point is I do not want to delay any further this
13 expedited discovery. Those requests were served on July 10th.
14 It has now been 14 days since those discovery requests were
15 served. I sent a protective order over last week on July 17th
16 so we could get the confidentiality protective order in place,
17 we could start exchanging documents, and there has been no
18 response to the proposed protective order.

19 So, I am asking the Court for direction to sort of
20 expedite this and move this case along. We have six
21 interrogatories directed to Mr. Sheehan, five interrogatories
22 directed to Bally, seven document production requests directed
23 to each of the defendants. This is discovery tailored
24 specifically to the expedited nature of this case, not merits
25 discovery, and then we would like to have an evidentiary

1 hearing.

2 MR. ANDERSON: May I respond, your Honor?

3 THE COURT: Go ahead, Mr. Anderson.

4 MR. ANDERSON: The United States Supreme Court and
5 the 7th Circuit have repeatedly admonished the District
6 Courts, not necessarily this District Court, but the District
7 Courts in general to determine as a threshold matter whether
8 Federal subject matter jurisdiction exists, and I believe, and
9 I have been practicing in this courthouse for now 31 years,
10 that the Court does not have Federal subject matter
11 jurisdiction for which reasons I can explain, and I would
12 respectfully suggest that that threshold issue needs to be
13 resolved before we go off with what counsel characterized as
14 tailored discovery and I would characterize as scorched earth
15 discovery.

16 I think if I spend maybe just a minute re-visiting
17 the procedural issue your Honor will have a good understanding
18 of my concerns about Federal subject matter jurisdiction.

19 The plaintiffs started out with this journey in the
20 California State Court, and on June 24th, they filed a State
21 Court action alleging that Mr. Sheehan was about ready to
22 start work at my client, Bally, and had allegedly stolen trade
23 secrets, significantly two plaintiffs in that case, 24 Hour
24 Fitness USA, which is a California corporation, and 24 Hour
25 Fitness Worldwide, a Delaware corporation.

1 The matter came before the State Court at a TRO
2 hearing; it was denied. State Court, however, scheduled the
3 matter for a preliminary injunction hearing on July 15th.
4 Rather than avail themselves of that preliminary injunction
5 hearing on July 15th, the plaintiffs dismissed that case and
6 refiled the identical case here in the Northern District of
7 Illinois. That filing was -- let's just say it was not well
8 thought out, because 24 Hour Worldwide is a Delaware
9 corporation, Bally is a Delaware corporation, and also
10 Mr. Sheehan was then and remains today a California resident,
11 and 24 Hour Fitness USA is a California corporation. There
12 was no diversity.

13 THE COURT: The issue is whether Mr. Sheehan is
14 domiciled here, isn't it?

15 MR. ANDERSON: That is an issue, and it appears to be
16 a contested issue, and that issue is -- that is one of the
17 issues.

18 There is another issue, which is the plaintiffs
19 alleged in the California case in their initial filing here
20 that 24 Hour Worldwide was a co-owner, a joint owner, of the
21 theft of trade secrets. Plaintiffs realized that 24 Hour
22 Worldwide's citizenship destroyed diversity and then they
23 filed a first amended complaint. We were last here on a first
24 amended complaint in which they attempted to conveniently drop
25 Worldwide.

1 That creates an issue under Rule 19, because if 24
2 Hour Fitness Worldwide, as they alleged under oath in
3 California, is a joint owner of these trade secrets, then it
4 becomes an indispensable party under Rule 19, because my
5 client is then subject to multiple risks of inconsistent and
6 serial litigation by co-owners, some who come to court and
7 then drop out.

8 So, that is another issue in addition to Mr. Sheehan,
9 Judge.

10 THE COURT: Let's take a break here.

11 MR. ANDERSON: Okay.

12 THE COURT: It looks like these issues are complex
13 enough that I am going to have to look at the law and decide
14 it.

15 So, do you want to brief these issues?

16 MR. ANDERSON: I have filed yesterday a Rule 12
17 motion to dismiss the first amended complaint.

18 THE COURT: Yes, I got that.

19 MR. ANDERSON: And then you also have Mr. Halligan's
20 motion for leave under Rule 15 to file a second amended
21 complaint, which we also believe is defective.

22 THE COURT: Okay.

23 MR. ANDERSON: So, here is my suggestion, and I will
24 end where I started, and that is that there are substantial
25 subject matter jurisdiction issues, I think the Court would

1 benefit from briefing them, and I think that Mr. Halligan
2 would probably like to respond to our motion to dismiss the
3 first amended complaint, and we would like to file a quick
4 response to his motion for leave to file a second amended
5 complaint, and then you will have the parties' respective law
6 on the subject matter jurisdiction issues.

7 I will add one more footnote as to why this last
8 attempt, the second amended complaint, to add a Federal
9 statutory basis will not fail -- will not succeed, and that is
10 because the 7th Circuit and several of these District Courts
11 have rejected this effort saying that a theft of trade secrets
12 case will not ally under the Federal Computer Abuse Act
13 because the mere theft of the trade secret is not a loss
14 within the meaning of the statute.

15 So, we see the plaintiffs here, I think in fairness
16 scrambling, and I would say it is in an attempt to create
17 Federal jurisdiction where there is not any, and I will just
18 be quiet with this remark, but I think your Honor needs to
19 take a look at their arguments as to why they have now created
20 Federal subject matter jurisdiction, our arguments as to why
21 we have not, and determine whether there is any basis to go
22 forward, or if this should be back in State Court where we
23 started.

24 MR. HALLIGAN: Your Honor --

25 THE COURT: Let me say this.

1 Go agree on a briefing schedule and we will hear it
2 at the end, or just pass a note to Mr. Dooley and we will
3 enter that order.

4 Now, the other issue is the expedited discovery. And
5 Mr. Anderson, are you willing to do anything in response to
6 this?

7 MR. ANDERSON: I have done something, your Honor.
8 I have presented the CEO of my client for deposition on the
9 residency issue. The remaining discovery is scorched earth,
10 in all fairness, and it should not be ordered until this
11 Court determines that it has Federal subject matter
12 jurisdiction.

13 I would also point out that there can't possibly be
14 any prejudice to the plaintiffs because they had an
15 opportunity to go forward on a preliminary injunction hearing
16 on July 15th and they abandoned that.

17 And even in their own papers they don't want you to
18 set a preliminary injunction hearing for another 60 days at a
19 minimum.

20 MR. HALLIGAN: Well, your Honor --

21 MR. ANDERSON: So, in the interim, we can figure out,
22 your Honor can figure out, whether you have Article 3 subject
23 matter jurisdiction before you inflict this on the Court and
24 the parties, and I respectfully suggest the parties should not
25 be ordered to do that unless you have determined that you have

1 subject matter jurisdiction.

2 MR. HALLIGAN: Your Honor, I have to note for the
3 record that I believe their attacks on subject matter
4 jurisdiction are meritless. We had these discussions before
5 coming into this Court, and I would like to --

6 THE COURT: I don't want to hear the argument on it.
7 I want the briefing schedule done and then the issue of
8 expedited discovery. I think it is serious enough a question
9 of jurisdiction that I can't decide discovery. But I will try
10 to give you a prompt ruling on the issue of jurisdiction.

11 MR. HALLIGAN: Could we just --

12 MR. ANDERSON: I would --

13 THE COURT: Just agree on a schedule and put the
14 ruling date 30 days approximately thereafter.

15 MR. ANDERSON: I am prepared to agree to a briefing
16 schedule right now.

17 I will respond to their motion for leave to file a
18 second amended complaint in 14 days.

19 THE COURT: That puts us at August 7th.

20 MR. ANDERSON: Fine.

21 THE COURT: Reply will be on August 21st.

22 MR. HALLIGAN: Yes, your Honor.

23 THE COURT: So, September 25th for ruling, and it
24 will be in court unless you hear from me otherwise.

25 MR. ANDERSON: 9:30 a.m., your Honor?

1 THE COURT: Yes.

2 MR. ANDERSON: Okay.

3 MR. HALLIGAN: Now, what about the other motions,
4 same briefing schedule?

5 THE COURT: Continued to that same date, I guess.

6 MR. HALLIGAN: I meant the other -- their rule to --
7 the motion they filed at 12:02 a.m.?

8 THE COURT: All of it.

9 MR. HALLIGAN: Everything is on that schedule?

10 THE COURT: Yes, everything.

11 MR. HALLIGAN: Okay.

12 THE COURT: And don't give me 15 pages on each motion
13 if you can avoid it, because it is a lot of material to go
14 through.

15 MR. ANDERSON: We will try to keep it short.

16 THE COURT: Okay.


17 MR. HALLIGAN: Thank you, your Honor.

18 MR. ANDERSON: Thank you.


19 (Proceedings concluded.)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.



Krista Flynn Burgeson,
CSR, RPR, RMR, CRR



Date

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WINSTON & STRAWN LLP

43 RUE DU RHONE
1204 GENEVA, SWITZERLAND

99 GRESHAM STREET
LONDON EC2V 7NG

333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-1543

KIMBALL R. ANDERSON
(312) 558-5858
kanderson@winston.com

35 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60601-9703

(312) 558-5600

FACSIMILE (312) 558-5700

www.winston.com

July 15, 2008

200 PARK AVENUE
NEW YORK, NEW YORK 10166-4193

25 AVENUE MARCEAU
75116 PARIS, FRANCE

101 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111-5894

1700 K STREET, N.W.
WASHINGTON, D.C. 20006-3817

VIA E-MAIL AND U.S. MAIL

R. Mark Halligan
Lovells LLP
330 N. Wabash Avenue
Suite 1900
Chicago, IL 60611

Re: 24 Hour Fitness USA, Inc. v. Bally Total Fitness Holding Corp. and Michael Sheehan

Dear Mark:

It was a pleasure meeting you today. As promised, here are the jurisdictional facts as I presently understand them.

Although Mr. Sheehan was hired as Bally's CEO effective July 1, 2008, he has not yet changed his residence from California. The critical date for determining jurisdiction is the date of filing the Chicago federal action, namely July 8, 2008. As of July 8, 2008, Mr. Sheehan's principal residence, indeed his only residence, remains in California where he has lived for over fifteen years. All of Mr. Sheehan's personal property is located in California (including automobiles licensed in California), other than clothing and incidentals that he travels with. He is registered to vote in California, licensed to drive in California, pays taxes in California, lives with his family in California, has personal phone service in California, etc.

To be sure, Mr. Sheehan has spent some time at Bally's headquarters in Chicago. He also has spent time at other Bally locations around the country. When he is in Chicago he stays at hotels. He has not purchased or rented a residence in Illinois, transferred his drivers license, voter registration, phones, mail service, etc. His family remains in California where he returns every weekend to be with them. If the Bally job goes well, he likely will move to Illinois but he has not done so yet. On the other hand, he may never move to Illinois if your client is successful with its request for injunctive relief. I am informed that Mr. Sheehan has not been served with summons and complaint in Illinois.

My review of the case law indicates that the federal court does not have jurisdiction because, as you know, diversity of citizenship jurisdiction requires that all defendants be of

WINSTON & STRAWN LLP

R. Mark Halligan
July 15, 2008
Page 2

diverse citizenship from the plaintiff. Here, it appears that Mr. Sheehan and Plaintiff were both citizens of the State of California as of July 8, 2008. The following case law appears pertinent.

The party seeking to preserve diversity jurisdiction bears the burden of showing that it has met the amount-in-controversy and complete-diversity-of-citizenship requirements. Gravdahl v. Conwell, Case No. 00-C-0579, 2002 U.S. Dist. LEXIS 4184, at *3 (N.D. Ill. Mar. 14, 2002) (internal citation omitted). In responding to a motion challenging the basis for subject matter jurisdiction, a plaintiff may not rest solely on the pleadings, but must produce evidence containing specific facts that show subject matter jurisdiction is proper. Samudio v. O'Loughlin, Case No. 96-C-2958, 1997 U.S. Dist. LEXIS 3370, at *3-*4 (N.D. Ill. Mar. 18, 1997).

The Supreme Court has held that, "in order to be a citizen of a State within the meaning of the diversity statute, a natural person must both be a citizen of the United States and be domiciled within the State." Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 828 (1989) (internal citations omitted). A court determines citizenship for the purpose of establishing diversity jurisdiction as of the date of the filing of the suit. Zafar v. Matlock, Case No. 92-C-5807, 1992 U.S. Dist. LEXIS 18264, at *2 (N.D. Ill. Dec. 2, 1992) (citing Smith v. Sperling, 354 U.S. 91, 93 n.1 (1957)). A presumption exists in favor of the old, established domicile over the alleged, newly acquired domicile. *Id.* (citing Lewis v. Moss, 797 F.2d 747, 751 (9th Cir. 1986)). "A domicile once established, whether by origin or choice, continues until a new domicile is acquired. The four elements of change are: (1) physical abandonment of the first domicile, (2) intention not to return, (3) physical presence in the new domicile, and (4) intent to make that his domicile." Koerber v. Apollo Golf, Inc., Case No. 93-C-711, 1993 U.S. Dist. LEXIS 1721, at *4 (N.D. Ill. Feb. 16, 1993).

A court determines domicile from a totality of the circumstances; no single factor governs. Gravdahl, 2002 U.S. Dist. LEXIS 4184, at *4. Courts look at various factors including, but not limited to: (1) current residence; (2) voting registration; (3) driver's license and automobile registration; (4) location of personal property; (5) place of employment or business; (6) membership in clubs or other associations; (7) family ties; (8) payment of taxes; and (9) length of time living in the State. *Id.*; see also Samudio, 1997 U.S. Dist. LEXIS 3370, at *7-*8.

The decision in Audi Performance & Racing, LLC v. Kasberger, 273 F. Supp. 2d 1220 (M.D. Ala. 2003), involved facts similar to our case. In the Audi decision, the court found that the plaintiff had not proven diversity of citizenship between it -- a citizen of Alabama -- and an individual defendant the court deemed was also a citizen of Alabama, despite the plaintiff's contention that the defendant had chosen a new domicile in Florida. *Id.* at 1228. Defendant Kasberger had been living in Alabama but had accepted, pre-lawsuit, a position with a company in Florida. *Id.* at 1223. Audi filed the lawsuit against him on March 11, 2003, but Kasberger did not begin his position in Florida until April 1, 2003. *Id.* On February 18, 2003, Kasberger moved some of his personal possessions and clothing to Florida, but lived -- rent- and utility-free -- with his parents in their Florida home. *Id.* He did not own or lease any property in Florida at the time Audi filed its complaint. *Id.* Kasberger's wife remained in Alabama until March 15,


WINSTON & STRAWN LLP

R. Mark Halligan
July 15, 2008
Page 3

2003 (post-complaint), when the couple's furniture and household goods were sent to Florida, as well. *Id.* Between February 18, 2003 and March 15, 2003, Kasberger returned to Alabama to stay with his wife at least two or three times; he stayed for periods of at least two or three days at a time. *Id.* Further, at the time Audi filed its lawsuit, Kasberger had taken no steps to obtain a Florida driver's license (and had retained his Alabama license); had not registered to vote in Florida or taken steps to remove himself from the Alabama voter rolls; continued to use his Alabama cell phone with an Alabama phone number after moving to Florida; and, as of the filing of the lawsuit, had not applied for a Florida telephone number. *Id.* at 1224. Kasberger also did not file a change of address with the United States Postal Service seeking to reroute his mail to Florida, nor did he give up any club or social memberships in Alabama. *Id.* Based on the above facts, the court held that Kasberger was an Alabama citizen as of the date the lawsuit was filed, and stated that it "need not explore whether Kasberger successfully changed his domicile at some later date." *Id.* at 1228. Thus, Audi had not proven complete diversity of citizenship. *Id.*

Mark, you may be aware of additional cases that I should review. If so, please share them with me. Also, if after reviewing this letter and the case law, you need additional facts to make an informed judgment about jurisdiction I will make every effort to accommodate your request.

Very truly yours,



Kimball R. Anderson

KRA:dmr

Raimondi, Mary

From: Gant Travel Management [bally@ganttravel.com]
Sent: Wednesday, June 25, 2008 1:05 PM
To: Raimondi, Mary
Cc: Travel Department; Farruggia, Barbara
Subject: 6/30/08: Ticketed itinerary for MICHAEL SHEEHAN to Chicago IL
Attachments: itineraryTSZFL4_25JUN.pdf



Gant Travel Management

Gant Travel Management
 650 East Devon, Suite 115
 Itasca, IL 60143
 Phone: (630) 227-3870 Fax: (630) 227-3875
 Toll Free: (800) 323-7459

[What is this?](#)

Wednesday, 25JUN 2008 02:04 PM (EST)

Passengers: MICHAEL SHEEHAN (19000)

Agency Reference Number: TSZFL4

Agent: Louise -x1151

[Click here](#) for a copy of your E-ticket receipt

Please review this itinerary for accuracy and reply to this email within 24 hours if any discrepancies.
 Ticketed itineraries are subject to airline fees and additional charges if changed for any reason.

AIR Monday, 30JUN 2008

United Airlines

From: (SFO) San Francisco CA, USA

To: (ORD) Chicago O'Hare IL, USA

Stops: 0

Seats: 03B

Equipment: Boeing 757 200 Jet

DEPARTS SFO TERMINAL 3 -- ARRIVES ORD TERMINAL 1

Frequent Flyer number: UA00175825959 - M SHEEHAN

United Airlines Confirmation number is TSZFL4

Flight Number: 830

Class: P-First

Depart: 10:55 AM

Arrive: 05:06 PM

Duration: 4 hour(s) 11 minute(s)

Status: CONFIRMED

Miles: 1846

Meal: LUNCH

HOTEL Monday, 30JUN 2008

RENAISSANCE OHARE (RENAISSANCE)

8500 West Bryn Mawr Avenue Chicago IL 60631 US

Number of Rooms: 1

Phone: 773-380-9600

Rate: USD 229

Check out: Thursday, 3JUL 2008

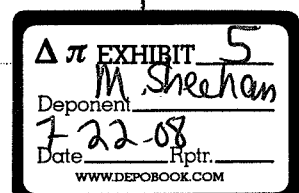
BEST AVAILABLE RATE / NON SMOKING KING REQUESTED

Confirmation Number: 82036181

Fax: 773-380-9601

Room GUARANTEED TO MASTER CARD

7/16/2008



GUARANTEED TO MASTERCARD / CANCEL BY 4PM DAY OF ARRIVAL

AIR Thursday, 3JUL 2008



United Airlines

Flight Number: 907

Class: P-First

From: (ORD) Chicago O'Hare IL, USA

Depart: 05:05 PM

To: (SFO) San Francisco CA, USA

Arrive: 07:35 PM

Stops: 0

Duration: 4 hour(s) 30 minute(s)

Seats: 02C

Status: CONFIRMED

Miles: 1846

Equipment: Boeing 757 200 Jet

Meal: DINNER

DEPARTS ORD TERMINAL 1 - - ARRIVES SFO TERMINAL 3

Frequent Flyer number: UA00175825959 - M SHEEHAN

United Airlines Confirmation number is TSZFL4

OTHER Wednesday, 1OCT 2008

THANK YOU FOR USING GANT TRAVEL

TRAVEL PURPOSE: RELOCATION

TRIP APPROVED 24JUN BY BARB FARRUGGIA

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

Contact Gant prior to departure if this transaction is not used.

Ticket Information:

Ticket for: MICHAEL SHEEHAN

Date issued: 06/24/08 Invoice nbr: 0

Ticket Nbr: 0167512521838 Electronic: Yes Amount: 2736.64 USD

Charged to: CA*****06735

Svc fee for: MICHAEL SHEEHAN

Date issued: 06/24/08

Document Nbr: 8908133423974 Amount: 35.00 USD

Total Tickets: 2736.64

Total Fees: 35.00

Total Amount: 2771.64

The Gant Equation Great People + Fantastic Technology = Delighted Travelers

Be sure to visit our website for additional travel tools and information

Click here to get advance boarding passes on these carriers:

United

For After hours emergency service: 877-546-2406 - CODE WH6

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

For Domestic flights - check in 2 hours prior to departure

For International flights - check in 3 hours prior to departure

Contact Gant prior to departure if this transaction is not used.

If you need to cancel this hotel reservation, contact Gant Travel Management.

Be sure to obtain a cancellation number for your records.

Thank you — Louise -x1151

Raimondi, Mary

From: Gant Travel Management [bally@ganttravel.com]
Sent: Thursday, July 03, 2008 2:08 PM
To: Raimondi, Mary
Cc: Travel Department
Subject: 7/3/08: Ticketed Itinerary for MICHAEL SHEEHAN to San Francisco CA
Attachments: itineraryR5XV1W_03JUL.pdf



Gant Travel Management

Gant Travel Management
 650 East Devon, Suite 115
 Itasca, IL 60143
 Phone: (630) 227-3870 Fax: (630) 227-3875
 Toll Free: (800) 323-7459

[What is this?](#)

Thursday, 3JUL 2008 03:07 PM (EDT)

Passengers: MICHAEL SHEEHAN (19000)

Agency Reference Number: R5XV1W

Agent: Louise -x1151

[Click here](#) for a copy of your E-ticket receipt

Please review this itinerary for accuracy and reply to this email within 24 hours if any discrepancies.
 Ticketed itineraries are subject to airline fees and additional charges if changed for any reason.

AIR Thursday, 3JUL 2008

American Airlines

Flight Number: 1835

Class: H-Coach

From: (ORD) Chicago O'Hare IL, USA

Depart: 05:20 PM

To: (SFO) San Francisco CA, USA

Arrive: 07:50 PM

Stops: 0

Duration: 4 hour(s) 30 minute(s)

Seats: 20B

Status: CONFIRMED

Miles: 1846

Equipment: McDonnell Douglas MD-83 Jet

Meal: FOOD TO PURCHASE

DEPARTS ORD TERMINAL 3 -- ARRIVES SFO TERMINAL 3

American Airlines Confirmation number is FDFYRZ

**TRAVEL PURPOSE: RELOCATION**

TRIP APPROVED 03JUL BY BARB FARRUGGIA

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

Contact Gant prior to departure if this transaction is not used.

Ticket Information:

Ticket for: MICHAEL SHEEHAN

Date issued: 07/03/08 Invoice nbr: 0

7/16/2008

Ticket Nbr: 0017512523154 Electronic: Yes Amount: 857.50 USD
Charged to: CA*****06735

Svc fee for: MICHAEL SHEEHAN

Date issued: 07/03/08

Document Nbr: 8908136166453

Amount: 35.00 USD

Total Tickets: 857.50

Total Fees: 35.00

Total Amount: 892.50

The Gant Equation Great People + Fantastic Technology = Delighted Travelers

Be sure to visit our website for additional travel tools and information

Click here to get advance boarding passes on these carriers:

American

For After hours emergency service: 877-546-2406 - CODE WH6

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

For Domestic flights - check in 2 hours prior to departure

For International flights - check in 3 hours prior to departure

Contact Gant prior to departure if this transaction is not used.

Thank you – Louise -x1151

7/16/2008

Raimondi, Mary

From: Gant Travel Management [bally@ganttravel.com]
Sent: Thursday, July 03, 2008 10:18 AM
To: Raimondi, Mary
Cc: Travel Department
Subject: 7/7/08: Itinerary for MICHAEL SHEEHAN to Chicago IL
Attachments: itineraryMOPV16_03JUL.pdf



Gant Travel Management

Gant Travel Management
 650 East Devon, Suite 115
 Itasca, IL 60143
 Phone: (630) 227-3870 Fax: (630) 227-3875
 Toll Free: (800) 323-7459

[What is this?](#)

Thursday, 3JUL 2008 11:17 AM (EDT)

Passengers: MICHAEL SHEEHAN (19000)

Agency Reference Number: MOPV16

Agent: Louise -x1151

[Click here](#) for a copy of your E-ticket receipt

Please review this itinerary for accuracy and reply to this email within 24 hours if any discrepancies.
 Ticketed itineraries are subject to airline fees and additional charges if changed for any reason.

AIR Monday, 7JUL 2008

Southwest Airlines
 From: (OAK) Oakland CA, USA
 To: (MDW) Chicago Midway IL, USA
 Stops: 0

Flight Number: 3167
 Depart: 02:50 PM
 Arrive: 08:50 PM
 Duration: 4 hour(s) 0 minute(s)
 Status: CONFIRMED

Class: K-Coach

Miles: 1844

Equipment: Boeing 737-700 Jet
 DEPARTS OAK TERMINAL 2
 Southwest Airlines Confirmation number is 2JQQKD

HOTEL Monday, 7JUL 2008

RENAISSANCE OHARE (RENAISSANCE)
 8500 West Bryn Mawr Avenue Chicago IL 60631 US

Number of Rooms: 1
 Phone: 773-380-9600
 Rate: USD 229

Confirmation Number: 85572613
 Fax: 773-380-9601
 Room GUARANTEED TO MASTER CARD

Check out: Friday, 11JUL 2008

CONTACT GANT OR HOTEL DIRECTLY IF YOU NEED TO CANCEL THIS RESERVATION.
 BE SURE TO OBTAIN A CANCELLATION NUMBER FOR YOUR RECORDS.

7/16/2008

TRAVEL PURPOSE: RELOCATION

CONFIRMATION NUMBER FOR SOUTHWEST IS 2SK8WS

SOUTHWEST FREQUENT FLIER NUMBER APPLIED

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

Contact Gant prior to departure if this transaction is not used.

The Gant Equation Great People + Fantastic Technology = Delighted Travelers

Be sure to visit our website for additional travel tools and information

Click here to get advance boarding passes on these carriers:

Southwest

For After hours emergency service: 877-546-2406 - CODE WH6

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

For Domestic flights - check in 2 hours prior to departure

For International flights - check in 3 hours prior to departure

Contact Gant prior to departure if this transaction is not used.

Thank you – Louise -x1151

7/16/2008

BALLY TOTAL FITNESS

8700 W. Bryn Mawr, 2nd Floor, Chicago, IL 60631 (773) 380-3000

NAME: Michael Sheehan**WEEK ENDED SATURDAY:** 7/5/2008**RETURN TO:** Mary Raimondi - Chicago corporate

DAY DATE	SUNDAY 6/29/2007	MONDAY 6/30/2007	TUESDAY 7/1/2007	WEDNESDAY 7/2/2007	THURSDAY 7/3/2007	FRIDAY 7/4/2007	SATURDAY 7/5/2007	TOTAL
OVERNIGHT AT: CITY			Chicago					
MEALS:								
BREAKFAST*		\$4.44						\$4.44
LUNCH*								\$0.00
DINNER*		\$11.00			\$31.00			\$42.00
ENTERTAINMENT*								\$0.00
SUBTOTAL	\$0.00	\$15.44	\$0.00	\$0.00	\$31.00	\$0.00	\$0.00	\$46.44
AIR-RAIL-BUS		\$2,771.64						\$2,771.64
TAXI		\$20.00						\$20.00
SEDAN SERVICE								\$0.00
PARKING								\$0.00
HOTEL ROOM							\$842.35	\$842.35
HOTEL (to be reimbursed)								
TELEPHONE								\$0.00
AUTO-GAS/TOLLS**								\$0.00
OTHER** (gratuities)								\$0.00
SUBTOTAL	\$0.00	\$2,791.64	\$0.00	\$0.00	\$0.00	\$0.00	\$842.35	\$3,633.99
TOTAL	\$0.00	\$2,807.08	\$0.00	\$0.00	\$31.00	\$0.00	\$842.35	\$3,680.43
LESS AMOUNTS PAID BY THE COMPANY (CIRCLE AMOUNTS ABOVE)								(\$2,771.64)
LESS AMOUNTS PAID BY THE COMPANY (CIRCLE AMOUNTS ABOVE)								(\$842.35)
DUE TO (FROM) EMPLOYEE								\$66.44
DATE	BUSINESS PURPOSE OF EACH TRIP							

EXHIBIT 6
 Deponent: M. Sheehan
 Date: 7-22-08 Rptr. _____
 WWW.DEPOBOOK.COM

EMPLOYEE SIGNATURE

DATE

APPROVER SIGNATURE

DATE

* Complete reverse side when paying for meals/entertainment of others.

** Complete reverse side.



RENAISSANCE.

CHICAGO O'HARE HOTEL RENAISSANCE O'HARE SUITES

8500 WEST BRYN MAWR AVENUE
CHICAGO, IL 60631
(773) 380 9600
RENAISSANCEHOTELS.COM/CHIBR

GUEST FOLIO

1630 SHEEHAN/MICHAEL 229.00 07/03/08 13:00 10245
ROOM NAME RATE DEPART TIME ACCT#

RENA 06/30/08 17:52
TYPE ARRIVE TIME

18

ROOM
CLERK

ADDRESS

PAYMENT

MR#: 826031643

DATE ROOM REFERENCE RATE TAXES CHARGES PER AGREED USE TAXES CURRENT BALANCE DUE

06/30 ROOM	1630, 1	229.00
06/30 ROOM TAX	1630, 1	27.25
06/30 OCC TAX	1630, 1	8.02
07/01 LAUNDRY	AG	17.64
07/01 ROOM	1630, 1	229.00
07/01 ROOM TAX	1630, 1	27.25
07/01 OCC TAX	1630, 1	8.02
07/02 FRESH	38631630	31.90
07/02 ROOM	1630, 1	229.00
07/02 ROOM TAX	1630, 1	27.25
07/02 OCC TAX	1630, 1	8.02
07/03 MC CARD		

\$842.35

TO BE SETTLED TO: MASTERCARD CURRENT BALANCE .00

THANK YOU FOR CHOOSING RENAISSANCE! TO EXPEDITE YOUR
CHECK-OUT, PLEASE CALL THE FRONT DESK, OR PRESS "MENU" ON
YOUR TV REMOTE CONTROL TO ACCESS VIDEO CHECK-OUT.

----- EXP. REPORT SUMMARY -----

06/30 ROOM	229.00	
ROOM TAX	27.25	
OCC TAX	8.02	
		264.27
07/01 LAUNDRY	17.64	
ROOM	229.00	
ROOM TAX	27.25	
OCC TAX	8.02	
		281.91
07/02 FRESH	31.90	
ROOM	229.00	
ROOM TAX	27.25	
OCC TAX	8.02	
		296.17

GET ALL YOUR HOTEL BILLS BY EMAIL BY UPDATING YOUR MARRIOTT
REWARDS PREFERENCES. OR, ASK THE FRONT DESK TO EMAIL YOUR
BILL FOR THIS STAY. SEE "INTERNET PRIVACY STATEMENT" ON
MARRIOTT.COM

Marriott Rewards Account # 826031643

Date 06/30/08-07/03/08 Est. Eligible Revenue \$718.90

Est. Points Earned: 7189

For account activity: 801-468-4000 or www.Marriott.com

RENAISSANCE.

CHICAGO O'HARE HOTEL

8500 WEST BRYN MAWR AVENUE
CHICAGO, IL 60631
(773) 380 9600
RENAISSANCEHOTELS.COM/CHIBR

ACCOUNTS PAST 30 DAYS SUBJECT TO SERVICE CHARGE OF 1.5% PER MONTH (ANNUAL RATE OF 18%)

This statement is your only receipt. You have agreed to pay in cash or by approved personal check or to authorize us to charge your credit card for all amounts charged to you. The amount shown in the credits column opposite any credit card entry in the reference column above will be charged to the credit card number set forth above. (The credit card company will bill in the usual manner.) If for any reason the credit card company does not make payment on this account, you will owe us such amount. If you are direct-billed, in the event payment is not made within 25 days after check-out, you will owe us interest from the check-out date on any unpaid amount at the rate of 1.5% per month (ANNUAL RATE 18%), or the maximum allowed by law, plus the reasonable cost of collection, including attorney fees.

Signature X

FOR RESERVATIONS AT ANY RENAISSANCE HOTEL, CALL 1 (800) HOTELS-1

Raimondi, Mary

From: Gant Travel Management [bally@ganttravel.com]
Sent: Wednesday, June 25, 2008 1:05 PM
To: Raimondi, Mary
Cc: Travel Department; Farruggia, Barbara
Subject: 6/30/08: Ticketed Itinerary for MICHAEL SHEEHAN to Chicago-IL
Attachments: itineraryTSZFL4_25JUN.pdf



Gant Travel Management

Gant Travel Management
 650 East Devon, Suite 115
 Itasca, IL 60143
 Phone: (630) 227-3870 Fax: (630) 227-3875
 Toll Free: (800) 323-7459

[What is this?](#)

Wednesday, 25JUN 2008 02:04 PM (EST)
Passengers: MICHAEL SHEEHAN (19000)
Agency Reference Number: TSZFL4
Agent: Louise -x1151
[Click here](#) for a copy of your E-ticket receipt

Please review this itinerary for accuracy and reply to this email within 24 hours if any discrepancies.
 Ticketed itineraries are subject to airline fees and additional charges if changed for any reason.

AIR Monday, 30JUN 2008

United Airlines
From: (SFO) San Francisco CA, USA
To: (ORD) Chicago O'Hare IL, USA
Stops: 0
Seats: 03B
Equipment: Boeing 757 200 Jet
DEPARTS SFO TERMINAL 3 - - ARRIVES ORD TERMINAL 1
Frequent Flyer number: UA00175825959 - M SHEEHAN
United Airlines Confirmation number is TSZFL4

Flight Number: 830 **Class:** P-First
Depart: 10:55 AM
Arrive: 05:06 PM
Duration: 4 hour(s) 11 minute(s)
Status: CONFIRMED **Miles:** 1846
Meal: LUNCH

HOTEL Monday, 30JUN 2008

RENAISSANCE OHARE (RENAISSANCE)
 8500 West Bryn Mawr Avenue Chicago IL 60631 US
Number of Rooms: 1
Phone: 773-380-9600
Rate: USD 229
Check out: Thursday, 3JUL 2008
BEST AVAILABLE RATE / NON SMOKING KING REQUESTED

Confirmation Number: 82036181
Fax: 773-380-9601
Room GUARANTEED TO MASTER CARD

7/16/2008

GUARANTEED TO MASTERCARD / CANCEL BY 4PM DAY OF ARRIVAL

AIR

Thursday, 3JUL 2008



United Airlines

Flight Number: 907

Class: P-First

From: (ORD) Chicago O'Hare IL, USA

Depart: 05:05 PM

To: (SFO) San Francisco CA, USA

Arrive: 07:35 PM

Stops: 0

Duration: 4 hour(s) 30 minute(s)

Seats: 02C

Status: CONFIRMED

Miles: 1846

Equipment: Boeing 757 200 Jet

Meal: DINNER

DEPARTS ORD TERMINAL 1 -- ARRIVES SFO TERMINAL 3

Frequent Flyer number: UA00175825959 - M SHEEHAN

United Airlines Confirmation number is TSZFL4

OTHER

Wednesday, 1OCT 2008

THANK YOU FOR USING GANT TRAVEL

TRAVEL PURPOSE: RELOCATION

TRIP APPROVED 24JUN BY BARB FARRUGGIA

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

Contact Gant prior to departure if this transaction is not used.

Ticket Information:

Ticket for: MICHAEL SHEEHAN

Date issued: 06/24/08 Invoice nbr: 0

Ticket Nbr: 0167512521838 Electronic: Yes Amount: 2736.64 USD

Charged to: CA*****06735

Svc fee for: MICHAEL SHEEHAN

Date issued: 06/24/08

Document Nbr: 8908133423974 Amount: 35.00 USD

Total Tickets: 2736.64

Total Fees: 35.00

Total Amount: 2771.64

The Gant Equation Great People + Fantastic Technology = Delighted Travelers

Be sure to visit our website for additional travel tools and information

Click here to get advance boarding passes on these carriers:

United

For After hours emergency service: 877-546-2406 - CODE WH6

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For International flights - check in 3 hours prior to departure

Contact Gant prior to departure if this transaction is not used.

If you need to cancel this hotel reservation, contact Gant Travel Management.

Be sure to obtain a cancellation number for your records.

Thank you -- Louise -x1151



2550 W. Lexington
Chicago, IL
312.666.1100

Date 6/30 Time 5:45

From Airport

To Residence

Cab No. _____ Driver _____

Cab Fare \$20

Lost & Found: ChicagoDispatcher.com

Looking for a cab to drive?

Drive With The Best!

- Vans-
- Sedans-
- Hybrids-
- Wheelchair Vans-
- Stretch Crown Vics-

Call 312-666-1100

*Want to lease your medallion?
We pay \$550/month plus expenses.*

Receipt Advertising: ChicagoDispatcher.com

BENNIGAN'S
8420 W BRYN MAWR
CHICAGO, IL 60631
773-380-1010

463 Chaunese

Tbl 61/1	Chk 3357	Gst
	Jun30'08 08:43PM	
1 Water		0.00
1 GG Bacon Burger		8.29
Medium		
Wheat Bun		
No		
Subtotal		8.29
Tax		0.79
08:57 Total		9.08

Thank you for coming to
Bennigan's Grill & Tavern!!!

BENNIGAN'S
8420 W BRYN MAWR
CHICAGO, IL 60631
773-380-1010

Date: Jun30'08 09:02PM
Card Type: Visa
Card #: XXXXXXXXXXXX0708
Exp Date: XX/XX
Auth Code: 006228
Check: 3357
Table: 61/1
Server: 463 Chaunese
VSCA: Auth Driver
MICHAEL SHEEHAN

Subtotal: 9.08
Tip: 1.92
Total: 11.00

Signature [Signature]
I agree to pay above total
according to my card issuer
agreement.

CUSTOMER COPY



San Francisco Intl Airport
San Francisco, CA 94128
(650) 821-8954

PEET'S 72
Date: Jun30'08 10:06AM
Card Type: VISA
Acct #: XXXXXXXXXXXXX0708
Exp Date: 04/11
Auth Code: 09620B
Check: 3965
Server: 125 EVANGELI
MICHAEL SHEEHAN

Subtotal: 4.44

TAX

TOTAL

SIGNATURE

I agree to pay above total
according to my card issuer
agreement.

* * * CUSTOMER COPY * * *

HMSHOST
MACARONI GRILL 773-686-6180
CHICAGO O'HARE AIRPORT
CHECK: 5810
TABLE: 310/1
SERVER: 9455 MARCO
DATE: JUL03'08 4:49PM
CARD TYPE: VISA A0 4*
ACCT #: XXXXXXXXXXXXX0708
EXP DATE: XX/XX
AUTH CODE: 05509B
MICHAEL SHEEHAN

TOTAL: 26.17
TIP 4.83

TOTAL

31.00
X *Michael Sheehan*
I AGREE TO PAY THE ABOVE AMOUNT
IN ACCORDANCE WITH THE CARD
ISSUER'S AGREEMENT.